

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1051
76-1052-3

UNITED STATES COURT OF APPEALS
For The Second Circuit

B
PJS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

STANLEY SIMPSON, JOHN OLIVER BRYANT and
EARL BEST,

Defendants-Appellants.

On Appeal From The United States District
Court For The Southern District Of New York

SUPPLEMENTAL
JOINT APPENDIX OF DEFENDANT-APPELLANT BEST
and DEFENDANT-APPELLANT BRYANT

Daniel Murphy, Esq.
Attorney for Defendant-
Appellant Bryant
233 Broadway
New York, N.Y. 10007 (tel.#964-7702)

Victor J. Herwitz, Esq.
Attorney for Defendant-
Appellant Best
22 East 10th Street
New York, N.Y. 10016 (tel.#LE.2-9470)

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JUDGMENT - BEST

United States of America vs.

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

EARL BEST

DOCKET NO. 75 Cr. 436 (IBG)

JUDGMENT AND COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
January 13, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

VICTOR J. HERWITZ, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYThere being a ~~finding~~ verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

FINDING &

JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did enter the Manufacturer's Hanover Trust Company, a bank the deposits of which were insured by the F.D.I.C., with intent to commit a felony, affecting such bank, namely, to take, by intimidation, money belonging to, in the care, custody, control, management and possession of said bank; (Title 18, Sections 2113(a) and 2 USC.) and conspiracy so to do. (Title 18, Section 371 USC.) as charged in two counts.

BEST COPY AVAILABLE

Judgment - Best

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of _____

TWELVE (12) YEARS on count 2. FIVE (5) YEARS on count 1. Sentences impose on counts 1 and 2 to run concurrently with each other.

Pursuant to the provisions of Section 4208(a)(2) of Title 18, U.S. Code, defendant shall become eligible for parole at such time as the Board of Parole may determine.

I have executed the within judgment and commitment as follows:

Defendant delivered on _____ to _____

Defendant noted appeal on _____

Defendant released on _____

Mandate issued on _____

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends, _____

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ED BY
U.S. District Judge

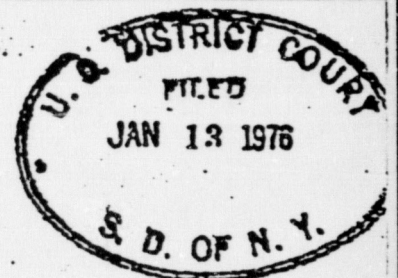
U.S. Magistrate

IVRING BEN COOPER, U.S.D.J.

Date

1-13-76

18



JUDGMENT - BRYANT

Judgment - Bryant

United States of America vs.

United States District Court

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

JOHN OLIVER BRYANT

DOCKET NO.

75 Cr. 436 (IBC)

JUDGMENT AND COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
January 13, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

DANIEL MURPHY, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &

JUDGMENT

Defendant has been convicted as charged of the offense(s) of: unlawfully, wilfully and knowingly did enter the Manufacturer's Hanover Trust Company, a bank the deposits of which were insured by the F.D.I.C., with intent to commit a felony, affecting such bank, namely, to take, by intimidation, money belonging to, in the care, custody, control, management and possession of said bank, (Title 18, Sections 2113(a) and 2 USC.) and conspiracy so to do, ((Title 18, Section 371 USC.)) as charged in two counts

30

60175387

Judgment - Bryant

admitted to
prior to

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of _____

TWELVE (12) YEARS on count 2. FIVE (5) YEARS on count 1. Sentences imposed on counts 1 and 2 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

Pursuant to the provisions of Section 4208(a)(2) of Title 18, U.S. Code, defendant shall become eligible for parole at such time as the Board of Parole may determine.

The Court considered defendant for sentencing under the Young Adult Offender Act and found him to be ineligible.

SPECIAL
CONDITIONS
OF
PROBATION

I have executed the within Judgment and Commitment as follows:

JAN 21 1976

MICROFILM

Defendant delivered on _____
Defendant noted appeal on _____
Defendant released on _____
Mandate issued on _____

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends, _____

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

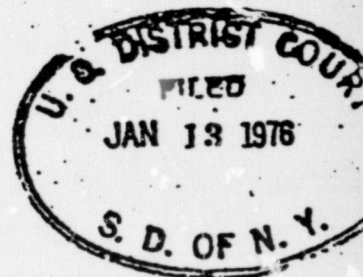
SIGNED BY

X U.S. District Judge

U.S. Magistrate

IRVING BEN COOPER, U.S.D.J.

Date 1-13-76



BEST'S MOTION FOR SUPPRESSION

Best's Motion for Suppression

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

STANLEY SIMPSON, JOHN OLIVER BRYANT,
and EARL BEST,

Defendants.

M O T I O N

75 Cr. 436 (I.B.C.)

NOW COMES THE DEFENDANT, by his counsel, and moves this Court pursuant to Rule 41(f), F.R.Cr.P., for the suppression of the following evidence:

a) A note taken from the actual possession of the defendant, Earl Best;

b) A dummy hand grenade taken from the actual possession of the defendant, Bryant, and from the constructive possession of his co-conspirator, Best; and

c) A statement made by the defendant, Best, after he was arrested.

Best's Motion for Suppression

The grounds upon which the defendants' motion should be granted are the unlawful arrest of the defendants, Best and Bryant, the illegal and unconstitutional search of the defendants Best and Bryant, and that the statement of the defendant Best was the product of the unlawful arrest and subsequent unlawful detention.

In support of his motion, the defendant submits herewith the appended affidavit of Elliot A. Taikeff, Esq., sworn to the

21st day of May, 1975 and a memorandum of the same date..

Yours, etc.

ELLIOT A. TAIKEFF
Attorney for Defendant Best
335 Broadway (Suite 1214)
New York City 10013
Tel. No. (212) BE3-3333

Dated: New York City
May 21, 1975

TO: John P. Flannery, II, Esq.
Assistant United States Attorney

Morton J. Turchin, Esq.
Attorney for Defendant Simpson

Allen S. Stim, Esq.
Attorney for Defendant Bryant

Best's Motion for Suppression

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

STANLEY SIMPSON, JOHN OLIVER BRYANT,
and EARL BEST,

Defendants.

A F F I D A V I T

75 Cr. 430 (I.B.C.)

State of New York)
County of New York) ss.:

ELLIOT A. TAIKEFF, ESQ., being duly sworn, deposes and says

1. I am the attorney for the defendant Earl Best. I submit this affidavit in support of the defendant's motion to suppress certain physical evidence and a statement made to the police, more specifically described in the attached motion.

2. The allegations of fact relating to the events of April 24, 1975 contained herein are based upon information and belief. The sources of this information are Assistant United States Attorney John P. Flannery, II and the defendant, Earl Best.

BEST COPY AVAILABLE

Best's Motion for Suppression

3. According to Mr. Flannery, the three defendants were observed by New York City Police Officers on lower Fifth Avenue on April 24, 1975. Simpson was the driver of an automobile which was parked near 156 Fifth Avenue at which is located a branch of the Chemical Bank. Bryant went inside the bank while Best waited near the car speaking to Simpson. After a while, Best went to the corner from which a person would have a view of the bank. Bryant emerged from the bank and exchanged a hand signal with Best. Bryant rejoined Best and proceeded north on Fifth Avenue on foot. Simpson remained in the car which did not move. Bryant and Best went to 200 Fifth Avenue where a branch of the Chase Manhattan Bank is located. They remained outside the bank together for approximately five minutes and then walked south again, along Fifth Avenue. At approximately that time, Simpson drove the car further south on Fifth Avenue from approximately 20th Street to 19th Street. Bryant and Best walked to 130 Fifth Avenue where a branch of the Manufacturer's Hanover Trust is located and both entered. In the bank, Bryant had a brief conversation with a guard in which he inquired whether the guard had seen his child and Best changed a \$5.00 bill. Bryant and Best were arrested shortly after they left the bank. The arresting officers had neither a warrant for their arrest nor a warrant to search them. At the time of their arrests, Bryant was found to be carrying a dummy hand grenade and Best was in possession of a note the text of which is found on page 2 (paragraph 3) of the complaint upon which the defendants were arraigned before the United States Magistrate. Following his arrest, Best made a confession to the police.

Best's Motion for Suppression

4. According to Best, he and Bryant had agreed to rob a bank by using the note and the dummy hand grenade. Bryant possessed the dummy hand grenade with Best's knowledge and in conformity with their conspiratorial plan. In furtherance of their plan, they set out on April 24, 1974 to look for a bank at which they might execute their plan. After his arrest, Best was given the required Miranda warnings. Mr. Best made his confession to the police because he believed that his apprehension meant that the "game was up".

.....
ELLIOT A. TAIKEFF

Sworn to before me the 21st
day of May, 1975 .

Notary Public

Best's Motion for Suppression

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

STANLEY SIMPSON, JOHN OLIVER BRYANT,
and EARL BEST,

Defendants.

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT BEST'S MOTION TO
SUPPRESS BOTH PHYSICAL EVIDENCE
AND A STATEMENT

Respectfully submitted,

ELLIOT A. TAIKEFF
Counsel for Defendant Best
335 Broadway (Suite 1214)
New York City 10013
Tel. No. (212) BE3-3333

Best's Motion for Suppression

F A C T S

The facts are as stated in the accompanying affidavit of Elliot A. Taikeff, Esq.

A R G U M E N T

Point I

THE ARRESTS OF THE DEFENDANTS
WAS WITHOUT PROBABLE CAUSE.
THEREFORE, THE ITEMS SEIZED
AND DEFENDANT BEST'S POST AR-
REST STATEMENT MUST BE SUPPRESSED.

Federal decisional law, since it establishes the minimal standards for the constitutionality of searches and seizures, is applicable to a determination of the propriety of the arrests and searches in this case. However, since the warrantless arrests here by state officers were not made pursuant to any Federal statute, their constitutionality is controlled by New York State law.

United States v. DiRe, 332 U.S. 581, 589 (1948); Johnson v. United States, 333 U.S. 10, 15 (1948); United States v. Hou Wan Lee, 264 F.Supp. 804, 807 (S.D.N.Y. 1967) (Mansfield, J.).

Best's Motion for Suppression

Upon the facts of this case, it is clear that the arrests and searches were made without probable cause, and, therefore, the items seized must be suppressed, Henry v. United States, 361 U.S. 98 (1959); People v. Corrado, 22 N.Y.2d 308 (1968). Furthermore, since defendant Best's statement was the product of an unlawful arrest and detention, it must also be suppressed. Wong Sun v. United States, 371 U.S. 471 (1963).

C O N C L U S I O N

FOR THE ABOVE STATED REASONS ALL ITEMS
SEIZED AS A RESULT OF THE ARRESTS, AND
THE STATEMENT OF DEFENDANT BEST, SHOULD
BE SUPPRESSED.

Respectfully submitted,

ELLIOT A. TAIKEFF
Counsel for Defendant Best
335 Broadway (Suite 1214)
New York City 10013
Tel. No. (212) BE3-3333

Dated: New York City
May 21, 1975

BEST COPY AVAILABLE

BRYANT'S MOTION FOR SUPPRESSION

Bryant's Motion for Suppression

Case assigned to Hon. Irving Ben
Cooper, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

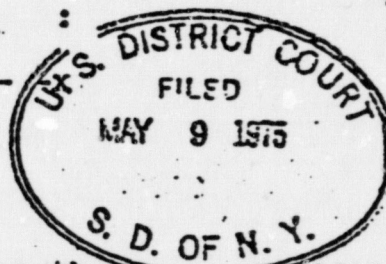
----- x
UNITED STATES OF AMERICA,

Indictment 75 Cr. 436

-v-

STANLEY SIMPSON, JOHN OLIVER BRYANT, : NOTICE OF MOTION
and EARL BEST,

Defendants.



S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of
ALLEN S. STIM, ESQ., sworn to the 9th day of May, 1975, and upon
all of the exhibits annexed thereto, and on all of the pleadings
and proceedings heretofore had herein, a motion shall be brought on
behalf of the defendant JOHN OLIVER BRYANT, in the United States
District Court for the Southern District of New York, at the
Courthouse located at Foley Square, New York, New York, before the
Hon. Irving Ben Cooper, United States District Judge in Room
2904 on the 20th day of May, 1975, at 10:00 o'clock in the fore-
noon of that day or at any other time therein when counsel can be
heard, for the following relief, to wit:

BEST COPY AVAILABLE

Bryant's Motion for Suppression

(A) For an order pursuant to Rule 41 (e)(2) FRCP, suppressing the use in evidence of items taken from the person of defendant JOHN OLIVER BRYANT (dummy hand grenade) or from the person of any other defendant arrested in his presence or together with him (notes allegedly taken from the person of defendant Earl Best), on the grounds that such items were taken and seized as the result of an unlawful search and seizure and for a hearing in aid of said motion; and

(B) For such other and further relief which to the Court may seem just and proper.

Dated: May 9, 1975

Yours, etc.

Allen S. Stim

ALLEN S. STIM
Attorney for defendant
JOHN OLIVER BRYANT
Office and P.O. Address
29 Broadway
New York, New York 10006
Tel. (212) 952-1889

2
(1)

TO: Hon. Paul J. Curran,
United States Attorney, Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

Morton J. Turchin, Esq.
Attorney for defendant
STANLEY SIMPSON
60 East 42 Street
New York, N.Y. 10017

Elliot A. Taikeff, Esq.
Attorney for defendant
EARL BEST
335 Broadway
New York, N.Y. 10013

Bryant's Motion for Suppression

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x Indictment 75 Cr. 436

UNITED STATES OF AMERICA, :

ATTORNEY'S AFFIDAVIT

-v- :

STANLEY SIMPSON, JOHN OLIVER BRYANT, :
and EARL BEST, :

Defendants. :

----- x
STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

ALLEN S. STIM, being duly sworn, deposes and says:

1. That I am the attorney for the defendant JOHN OLIVER BRYANT, having been assigned to represent him pursuant to the provisions of the Criminal Justice Act, and I am submitting this affidavit in support of the motion being brought on his behalf for an order pursuant to Rule 41 (e)(f) FRCP suppressing the use in evidence of any items taken from his possession or from the possession of anyone arrested together with him, on the ground that such items were taken and seized as the result of an unlawful search and seizure and for a hearing to be held in aid of said motion.

Bryant's Motion for Suppression

2. That on or about May 2, 1975, an indictment was returned containing two counts and naming all of the above named defendants on each count. Count One charges the crime of CONSPIRACY to violate the Federal Bank Robbery Statute (Tit. 18, U.S.C. § 2113 (a)) from on or about the month of March 1975 and up to the date of the indictment, in violation of Title 18, U.S.C. § 371. Count Two charges a substantive violation of Title 18, U.S.C. § 2113 (a) and 2 on April 24, 1975 by entry into Manufacturers Hanover Trust Co. [a Federally Insured bank) by entry therein with the intention of

unlawfully taking money belonging to, in the control of, custody, control, management and possession of said bank.

7. That on May 8th, 1975, the defendants pled not guilty to the charges set forth in said indictment, a copy of which indictment is hereto annexed as Exhibit "1".

8. That previously, and on the 24th day of April, 1975, the defendants were arrested in the vicinity of the Manufacturer's Hanover Trust Company at 130 Fifth Avenue, New York, N.Y. The next day they were arraigned before a Magistrate at the United States Courthouse at Foley Square, New York, New York, Annexed hereto and marked Exhibit "2" hereof is a copy of the complaint before said Magistrate.

9. As can be seen from examining the complaint and from conversations with the Assistant United States Attorney handling this case, it appears that the defendants JOHN OLIVER BRYANT and EARL BEST were arrested in the street outside of Manufacturer's Hanover Trust Company Branch at 130 Fifth Avenue, New York, New

Bryant's Motion for Suppression
York after they had exited said bank. It is claimed that there was taken from the defendant JOHN OLIVER BRYANT a dummy hand grenade and from the defendant EARL BEST two notes, the contents of which are set forth in the complaint hereto annexed. I am informed by the Assistant United States Attorney that no visible attempt was made to rob the bank by the defendants and that the items taken from the defendants JOHN OLIVER BRYANT and EARL BEST were in their pockets. There is no claim that the aforementioned items, which are the subject matter of this notice to suppress were voluntarily given to the arresting officer or that any warrant had been issued authorizing a search of said defendants. The codefendant STANLEY SIMPSON, I am informed was arrested nearby in an automobile.

9. It is submitted that as there was no visible evidence that defendants were participating in a crime and as there was no attempt to rob a bank, that there was neither a legal basis for the arrests or of the search of the person of defendants and therefore any seizure of the items as heretofore enumerated was illegal and the use of said items in evidence should be suppressed.

10. That no prior application for the relief sought has been made.

WHEREFORE, it is respectfully requested that the relief sought in the notice of motion be granted.

Sworn to before me this 9th
day of May, 1975

John F. Kelly
Notary Public, State of New York

Allen S. Stim

ALLEN S. STIM

Bryant's Motion for Suppression

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- Conspiracy and to
UNITED STATES OF AMERICA, thereof, the following overt

acts, were committed: INDICTMENT

STANLEY SIMPSON, et al. vs. 75 Cr.

JOHN OLIVER BRYANT, and

EARL BEST, et al. vs. 75 Cr.

the defendant Defendants, SIMPSON, et al. vs. 1972

COUNT ONE

The Grand Jury charges: Each day of April, 1975,

1. From in and around March, 1975, up to and

including the date of the filing of this indictment, in

the Southern District of New York, the defendants,

STANLEY SIMPSON, JOHN OLIVER BRYANT and EARL BEST,

unlawfully, wilfully and knowingly did combine, conspire,

confederate and agree together and with each other and

with other persons to the Grand Jury unknown, to commit

offenses against the United States, to wit, to violate

Title 18, United States Code, Section 2113(a).

2. It was part of said conspiracy that, the

defendants, STANLEY SIMPSON, JOHN OLIVER BRYANT and

EARL BEST would unlawfully, wilfully and knowingly, by

BEST COPY AVAILABLE

Bryant's Motion for Suppression
force and violence and by intimidation take and
attempt to take from the person and presence of il, 1975,
another, property and money belonging to and in the
care, custody, control, management and possession of
banks, the deposits of which banks were then insured
by the Federal Deposit Insurance Corporation.

Exhibit "1"

the defendant, EARL BEST, waited for a car

OVERT ACTS

In furtherance of the 24th day of April, 1975,
in furtherance of said conspiracy and to
effect the objectives thereof, the following overt
acts, among others, were committed by the defendants
in the Southern District of New York:

1. On or about the 24th day of April, 1975,
the defendant, STANLEY SIMPSON, parked a 1972 Bronze
Pontiac in the vicinity of 20th Street and Fifth
Avenue, New York, New York.
2. On or about the 24th day of April, 1975,
the defendants, JOHN OLIVER BRYANT and EARL BEST, went
to the Chemical Bank, 156 Fifth Avenue, New York,
New York.
3. On or about the 24th day of April, 1975,
the defendant, JOHN OLIVER BRYANT, entered the Chemical
Bank, 156 Fifth Avenue, New York, New York.
4. On or about the 24th day of April, 1975,
the defendants, JOHN OLIVER BRYANT and EARL BEST, went
to the Chase Manhattan Bank, 200 Fifth Avenue, New
York, New York.

Bryant's Motion for Suppression

5. On or about the 24th day of April, 1975, the defendant, STANLEY SIMPSON, parked a 1972 Bronze Pontiac on East 19th Street, New York, New York.

6. On or about the 24th day of April, 1975, the defendants, JOHN OLIVER BRYANT and EARL BEST, went to the Manufacturer's Hanover Trust Company (hereinafter "Manufacturer's Hanover"), 130 Fifth Avenue, New York, New York.

7. On or about the 24th day of April, 1975, the defendants, JOHN OLIVER BRYANT and EARL BEST, entered the Manufacturer's Hanover.

8. On or about the 24th day of April, 1975, the defendant, EARL BEST, waited on line at a teller

9. On or about the 24th day of April, 1975, the defendant, JOHN OLIVER BRYANT, had a conversation with a bank guard in Manufacturer's Hanover.

(Title 18, United States Code, Section 371.)

CONT TWO

The Grand Jury further charges:

On or about the 24th day of April, 1975, in the Southern District of New York, STANLEY SIMPSON, JOHN OLIVER BRYANT and EARL BEST, the defendants, unlawfully, wilfully and knowingly did enter the Manufacturer's Hanover Trust Company, 130 Fifth Avenue, New York, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation with the

Bryant's Motion for Suppression
intent to commit in such bank, a felony,
affecting such bank, namely, to take, by intim-
idation, money belonging to, in the care, custody,
control, management, and possession of said bank.

(Title 18, United States Code, Sections
2113(a) and 2.)

Exhibit "1"

FOREMAN

PAUL J. CURRAN
United States Attorney

Exhibit "1"

Bryant's Motion for Suppression

11:01

Approved:

John P. Flannery II
JOHN P. FLANNERY, II
Assistant United States Attorney

Before:

HONORABLE MARTIN D. JACOBS
United States Magistrate,
Southern District of New York.

----- x
UNITED STATES OF AMERICA :

COMPLAINT

- v - :

Violation of
18 U.S.C. § 371

STANLEY SIMPSON, JOHN OLIVER :
BRYANT and EARL BEST, :

Defendants. :

----- x
SOUTHERN DISTRICT OF NEW YORK, ss.:

STEVEN H. HEUBECK, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, United States Department of Justice, and charges as follows:

1. From on or about the 1st day of April, 1975 and continuously thereafter up to and including the date of the filing of this complaint, in the Southern District of New York, STANLEY SIMPSON, JOHN OLIVER BRYANT and EARL BEST, the defendants and others unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Section 2113(a) of Title 18, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would, by force and violence and intimidation, take and attempt to take from the person and presence of another, property and money and other things of value belonging to and in the care, custody, control, management and possession of banks, credit unions and savings and loan associations in violation of Section 2113(a), of Title 18, United States Code.

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 24th day of April, 1975, defendant STANLEY SIMPSON parked a 1972 Bronze Pontiac across the street from the Manufacturer's Hanover Trust Company, 130 Fifth Avenue, New York, New York;

2. On or about the 24th day of April, 1975, defendants JOHN OLIVER BRYANT and EARL BEST entered the Manufacturer's Hanover Trust Company, 130 Fifth Avenue, New York, New York.

(Title 18, United States Code, Section 371.)

Exhibit "2"

The sources of deponent's information and the grounds of his belief are investigations conducted by him in the course of his official duties, including:

1. Statement to Bureau Agents by Sergeant John Henry, New York City Police Department, that on April 24, 1975 he did observe defendants BRYANT and BEST exit two banks in rapid succession and on each occasion these two defendants were observed "waiving on" defendant SIMPSON, who was driving a 1972 Bronze Pontiac;

2. Further statement to Bureau Agents by Sergeant Henry that defendant SIMPSON was observed parking a 1972 Bronze Pontiac opposite the Manufacturer's Hanover Trust Company (hereinafter "MHTC"), 130 Fifth Avenue, New York, New York, which bank defendants BRYANT and BEST did enter;

3. Recovery from defendant BEST by arresting police officers of a note which read:

"FREEZE: KEEP HANDS IN VIEW:
DON'T TRY ANYTHING, OR YOU WILL
DIE: I HAVE A BOMB : : : PUT
ALL MONEY ON TOPBIG BILLS FRIST [SIC]:

NOW, WHEN YOU FINISH
AND I GO WAIT FIFTEEN
MINUTES BEFORE YOU
DO ANYTHING YOU WILL BE WATCHED."

Bryant's Motion for Suppression

4. Recovery from defendant BRYANT by arresting police officers of a dummy hand grenade;

5. Statement to Bureau Agents by defendant BEST that he and co-defendant BRYANT entered MHTC, 130 Fifth Avenue, intending to rob same and the Pontiac co-defendant SIMPSON was driving was their "get-away" car; and

6. MHTC at 130 Fifth Avenue is insured by the Federal Deposit Insurance Corporation.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above-named defendants and that they may be arrested and imprisoned, or bailed, as the case may be.

STEVEN H. NEUBECK

Sworn to before me this
25th day of April, 1975.

Exhibit "2"

Bryant's Motion for Suppression

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ALLEN S. STIM, an attorney at law with offices at 29 Broadway,
New York, New York, being duly sworn, deposes and says:

That on May 9th, 1975, he served the within NOTICE OF MOTION
and AFFIDAVIT upon the following individuals at the addresses
set forth below, which were designated by them for that purpose
true copies of the abovementioned documents by depositing true
copies of same in post paid properly addressed envelopes in an
official depository maintained by the United States Postal Service
within the State of New York and addressed as follows:

Morton J. Turchin, Esq.
Attorney for defendant STANLEY SIMPSON
60 East 42 Street
New York, N.Y. 10017

and

Elliot A. Taikeff, Esq.
Attorney for defendant EARL BEST
335 Broadway
New York, N.Y. 10013

Sworn to before me this 9th
day of May, 1975

John F. Kelly
Notary Public, State of New York

Allen S. Stim

ALLEN S. STIM

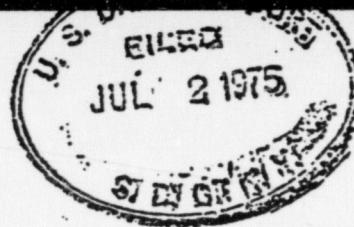
JOHN F. KELLY
Notary Public, State of New York
No. 31-7217350
Qualified in New York County
Commission Expires March 30, 1976

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OPINION ON MOTIONS TO SUPPRESS
(COOPER D.J.)

Opinion on Motions to Suppress
(Cooper D.J.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA,

-against-

STANLEY SIMPSON, JOHN OLIVER
BRYANT and EARL BEST,

Defendants.
-----X

75 Cr. 436

OPINION

42716

APPEARANCES:

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Opinion on Motions to Suppress
(Cooper D.J.)

ELLIOT A. TAIKEFF, ESQ.
335 Broadway
New York, New York 10013

Attorney for Defendant Best

IRVING BEN COOPER, D. J.

These are motions to suppress evidence made by defendants Simpson, Bryant and Best, pursuant to Fed.R.Crim.P. 41; in addition, Simpson moves for a hearing with respect thereto. Defendants are charged in a two-count indictment with conspiracy and with an attempt to rob a federally insured bank, in violation of 18 U.S.C. §§2113(a), 371 and 2.

Defendants seek to suppress three items: (1) a "practice" grenade found on defendant Bryant as a result of a pat-down search; (2) a note demanding bank funds dropped by defendant Best; and (3) a statement made by Best¹ after he had been advised of his Miranda² rights.

The motions are denied in all respects.

1. See infra, at p.7.

2. Miranda v. Arizona, 384 U.S. 436 (1966).

Opinion on Motions to Suppress
(Cooper D.J.)

On April 24, 1975 defendants Bryant and Best were observed by several members of the New York City Police Department's Anti-Crime Unit on routine duty. At about 1:30 P.M., police Sergeant William Henry, police officer John Reddy and another police officer were sitting in an unmarked taxi at 20th Street and Fifth Avenue in New York City. From this vantage point, they noted the movements of each defendant which alerted them and gave rise to their suspicions. Henry and Reddy observed defendants Best and Bryant cross from the east side to the west side of Fifth Avenue at 20th Street. On the northwest corner of that intersection was a branch office of the Chemical Bank. Best and Bryant walked a short distance past the bank's entrance on 20th Street where they stopped momentarily. After a short interval, they returned to the bank's 20th Street entrance and Bryant entered.

Best meanwhile retraced his steps, re-crossing Fifth Avenue and continued halfway down the block on the north side of 20th Street. There defendant Simpson sat in a 1972 bronze-colored Pontiac. Best talked briefly with Simpson and then crossed over toward the south side of 20th Street, ostensibly to get a better view of the bank's Fifth Avenue exit. Almost simultaneously, Bryant, who had been

Opinion: on Motions to Suppress

(Cooper D. J.)

on a "feeder" line in the bank, left it by its Fifth Avenue exit. After giving Bryant a hand signal, Best returned to Simpson in the car. He had a second conversation with Simpson, and then joined Bryant. The two walked north on Fifth Avenue.

As they were going north, Best and Bryant stopped, and for several minutes looked in the window of a branch office of the Chase Manhattan bank located at 200 Fifth Avenue. Neither entered the bank where two armed guards were viewable from the outside; instead they changed their course, heading south on Fifth Avenue, passing both Henry and Reddy.

Although it was a warm day, Bryant wore a three-quarter length top coat and kept it buttoned. Moreover, he held his left arm very stiffly in his coat pocket. Officer Reddy said it looked "like he had a shot gun under his coat." Best wore a windbreaker.

When Bryant and Best reached a branch office of the Manufacturer's Hanover Trust Co. at 130 Fifth Avenue near 18th Street, they entered the Fifth Avenue entrance. They were observed by Henry and Reddy and a third police officer named Ricciardi. Best got on a feeder line for the teller stations and Bryant engaged the bank guard in

conversation. At approximately this time defendant Simpson drove the Pontiac one block south to 19th Street and parked there.

Bryant's back was toward Henry and Reddy as they both looked through the bank's floor-to-ceiling windows. Bryant had his right arm around the bank guard's waist and he continued to maintain his left arm stiffly in his left pocket. It appeared to both Henry and Reddy that Bryant was holding a gun on the bank guard with his left hand, even as he held the guard's waist with his right. After a few moments, Bryant walked with the bank guard towards the rear of the bank. Best was by then at the head of the feeder line at the teller station.

Concerned for the safety of the bank guard, Reddy entered the bank by its Fifth Avenue entrance. As he did, first Best, then Bryant, spontaneously rushed to the bank's side exit fronting 18th Street. Thereupon Reddy exited the bank onto Fifth Avenue. Henry almost bumped into Best as the latter came out of the 18th Street exit. Upon confronting Best, Henry said, "I'm a police officer, don't move." Henry then patted Best down. Henry felt nothing like a weapon and searched no further.

Simultaneously, Reddy came around the corner to 18th Street with officer Ricciardi. Henry told them to stop Bryant who was coming out of the bank's 18th Street exit. They immediately stopped Bryant, still with his left arm held stiffly and his left hand in his coat pocket. Reddy ordered Bryant not to move or move his hands, and asked, "what were you doing in the bank?" Bryant did not answer. Reddy then asked whether Bryant had any weapons on him. Bryant said he had none. Reddy then patted Bryant and without going beyond the surface of Bryant's clothing, felt what he could immediately identify as a grenade.³ Reddy then reached into Bryant's left coat pocket and pulled out a grenade. It was only then that Reddy discovered that the grenade was not a "live" one.

Instantly, Reddy and Ricciardi informed Henry of the grenade found on Bryant. They then escorted Bryant to a position slightly west of the bank's 18th Street exit. Informed of this new development, Henry directed Best to the same spot. As Best was walking to join the others, Henry

3. While in the U.S. Air Force from 1955 to 1959, Reddy became familiar with and used grenades.

notified that he put his right hand in his windbreaker pocket and casually tried to pull out an envelope concealed within his pocket. He let the envelope slip from his pocket to the ground. Henry picked it up. On the outside of the envelope there was typewritten: FREEZE: KEEP HANDS IN VIEW: DON'T TRY ANYTHING OR YOU WILL DIE: I HAVE A BOMB: PUT ALL MONEY ON TOP BIG BILLS FIRST [SIC]: NOW, WHEN YOU FINISH AND I GO WAIT FIFTEEN [SIC] MINUTES [SIC] BEFORE YOU DO ANYTHING. YOU WILL BE WATCHED.

As they stood just west of the bank's 18th Street exit, Best and Bryant were told they were under arrest. They were advised of their constitutional rights by Reddy. Simpson also was placed under arrest. Shortly thereafter, Best made an inculpatory statement to the effect that he and Bryant were going to rob the Manufacturer's Hanover bank on 18th Street and that Simpson would drive their getaway car.

I DISCUSSION

At the outset it should be noted that Simpson was not present at the time of the contested search and seizures. He does not allege any proprietary or possessory interest in the seized items. Accordingly, we hold that Simpson has no standing to urge suppression. Brown v.

Opinion on Motion to Suppress
(Cooper D.J.)

United States, 411 U.S. 223, 229 (1973); Alderman v. United States, 394 U.S. 165 (1969). On that ground alone we could deny his application for a hearing. A more fundamental reason impels us to deny a hearing. It is well settled that unsupported speculation with no specific allegations of prejudice in a moving affidavit by defendant or his counsel is totally insufficient to justify a hearing. United States v. Gardner, 308 F.Supp. 425, 427 n. 1 (S.D.N.Y. 1969); United States v. Fardo-Bollai, 3 F.Supp. 473, 475 (S.D.N.Y. 1964), aff'd, 348 F.2d 316 (2d Cir. 1965). Here, defense counsel completely fail to submit any evidence based on personal knowledge supportive of their conclusory statements.⁴ See, United States v. Culotta, 413 F.2d 1343 (2d Cir. 1970). Accordingly, we deny a hearing.

The motion to suppress the dummy hand grenade found on Bryant after the pat-down search is also denied. See Terry v. Ohio, 392 U.S. 1 (1968). The central principle enunciated in Terry is that a police officer who has reason to believe that he is dealing with an armed and dangerous

4. We feel compelled to note that only Best's counsel has seen fit to provide us with any legal authority (and that consisting of two-thirds of a page). See Local Rule 9(b).

search of Bryant. The grenade is admissible.

Defendants further urge that the "demand" note dropped by Best and his later inculpatory statement are inadmissible as the product of an unlawful search and seizure. See, Wong Sun v. United States, 371 U.S. 471 (1963). We disagree.

Although at first, when Henry confronted Best as he was exiting the bank, there may not have been sufficient probable cause to conduct a full search, no such search was made. Henry merely conducted a pat-down search of Best's outer clothing. We hold that this initial "Terry"-type search was justified by Best's unusual conduct in scouting the three banks and in his hurried exit from the Manufacturer's Hanover bank. See Terry, supra at 27. Here, "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Id.

Additional evidence justifying a full search was forthcoming seconds later when Henry was informed by the other officers that they had discovered a dummy grenade on Bryant. This additional, impressive factor provided such probable cause as would justify the arrest of Best. United States v. Price, 441 F.2d 1092, 1094 (2d Cir. 1971).

Opinion on Motions to Suppress
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The "demand" note is consequently admissible as an article seized in "plain view." See Coolidge v. New Hampshire, 403 U.S. 443, 465-73 (1971); United States v. Wolfe, 457 F.2d 773, 774 (2d Cir. 1972).

The final claim is that Best's inculpatory statement, to the effect that he and Bryant intended to rob the Manufacturer's Hanover bank and that Simpson would drive the getaway vehicle, is inadmissible. In the light of what we have herein disclosed, this claim is without merit and we reject it. The officers certainly had probable cause to arrest all three defendants; it is undisputed they were told of their Miranda rights before Best made his statement. We hold his inculpatory statement admissible.

Motions denied in all respects.

SO ORDERED:

New York, N.Y.
July 1, 1975

IRVING BEN COOPER
UNITED STATES DISTRICT JUDGE

DEFENDANT BEST'S EXHIBIT C
FOR IDENTIFICATION

K

Defendant Best's Exhibit C for
Identification

G-43522

POLICE DEPARTMENT
CITY OF NEW YORK

From: Sergeant William Henry, Supervisor 13th Precinct Anti
Crime Unit

To: Commanding Officer, 13th Precinct

Subject: REQUEST FOR DEPARTMENTAL RECOGNITION.

1. On April 24, 1975, Sergeant William Henry, Shield 1039, Police Officer William Galluba, Shield 30229, Police Officer John Reddy, Shield 24205, Police Officer Anthony Ricciardi, Shield 24293 and Detective Donald Schwarz, Shield 3669 all members of the 13th Precinct Anti Crime Unit did perform an act of bravery in the intelligent performance of duty, while in imminent danger of serious injury, and grave personal risk of their lives under the following circumstances.

2. On April 24, 1975, the above named officers performing tour 0740-1610 hours, assigned to Operation Back Track. This entails special attention to the prevention of robberies at banking institutions and payrolls. At approximately 1330 hours, Sergeant Henry, Officers Galluba and Reddy observed two (2) well dressed males acting suspiciously and loitering in the vicinity of the Chemical Bank located at 156 5th Avenue. Officers then kept them under close surveillance when one male later identified as Oliver Bryant, entered the bank, while the other male also identified later as Earl Best stationed himself outside the bank as a lookout. Officer Reddy immediately entered the bank and observed the suspect Bryant on a tellers line watching the procedures of the bank. At this point, Sergeant Henry and Officer Galluba observed the suspect Best walk east on 20th Street and then have a conversation with a third male later identified as Stanley Simpson who was in the drivers seat of a tan Pontiac with the motor running which was parked at the curb. Officer Reddy in the bank, still keeping the suspect Bryant under surveillance, observed him make change and exit the bank, then meet the other suspect Best and hold a conversation. When the two suspects started to proceed north on 5th Avenue, Officer Reddy then followed the two suspects. Sergeant Henry, observing this, while keeping the occupant in the tan Pontiac under observation immediately called for an additional Anti Crime Unit, Officer Ricciardi and Detective Schwarz to respond to 5th Avenue and 20th Street. Upon arrival, he directed that two officers keep the tan Pontiac under continued surveillance, while he and Officer Ricciardi then proceeded north on 5th Avenue in search of Officer Reddy and the two suspects. As Officer Reddy followed the two suspects, he observed that the suspect Bryant was walking stiff-armed as if trying to conceal something under his coat. As they approached 23rd Street and 5th Avenue, they stopped in front of the Chase Manhattan Bank and kept peering through the window for approximately five minutes, then proceeded south on 5th Avenue to 20th Street. At this point, Sergeant Henry

and Officer Ricciardi arrived at this location and picked up the surveillance of the suspects. Officer Reddy then informed Sergeant Henry and Officer Ricciardi that he felt that the suspects were armed and had cased the Chase Manhattan Bank and believed that they were going to rob a bank. Sergeant Henry then directed Officer Ricciardi to take the lead in the surveillance of the suspects while he and Officer Reddy would follow behind at a short distance. At 18th Street and 5th Avenue, the suspects stopped and loitered in front of the Manufacturers Hanover Bank, look up and down the avenue, and then both suspects entered the bank. Officers then immediately positioned themselves outside the bank, looking through the windows, officers observed that the suspect Bryant got on a tellers line, then get off when The suspect Best took up his position on the tellers line the Bryant walked up to the armed bank guard and engage him in conversation. During this conversation, Bryant then placed his arm around the guard's waist in close proximity of the guard's revolver, while keeping his own left arm in his outer coat pocket. Bryant then walked the guard to the rear of the bank that contained a small alcove. The officers determined that a robbery was in progress and decided to maintain their position outside the bank and apprehend the perpetrators by surprise as they left the bank to avoid a possible hostage situation or a chance of a civilian or police officers being killed or injured. As the perpetrator Best continued to look around while on the tellers line he apparently observed the officers taking their positions outside the bank, he suddenly bolted from the line and began to run out the side door exit. The officers with guns drawn, seeing this, ran to the side door where they apprehended him. While Sergeant Henry was frisking the perpetrator, Officer Ricciardi then observed that the other perpetrator Bryant was coming out of the other side door of the bank, he and Officer Reddy in immediate pursuit and after a short chase, apprehended him. As Officer Reddy was frisking Bryant he stated that he felt a hard object in Bryant's left coat pocket which felt like a hand grenade. Officer Reddy then placed his hand in the coat pocket and disarmed him of a United States ordinance hand grenade. Sergeant Henry was approaching Officers Ricciardi and Reddy with the perpetrator Best and a typewritten note that Best attempted to discard while being frisked which stated "Freeze, Keep hands in view. Don't try anything or you will die. I Have a bomb. Put all money on top, big bills first. Now when you finish and I go, wait 15 minutes before you do anything. You will be watched". They were placed under arrest.

3. Officer Galluba and Detective Schwarz which were keeping the occupant of the tan Pontiac under close surveillance and which was now cruising the area received a radio call on frequency F-2 from Sergeant Henry and were apprised of the arrest of the two prisoners and of the grenade and note found on the prisoners. This led to believe that the suspect driving the tan vehicle was also armed and dangerous. As the officers were keeping the vehicle under surveillance they had to maintain a distance so as to not be observed by the suspect, suddenly observed the occupant pull over in front of 109 East 19th street where the suspect Simpson exited the vehicle. The officers

when they reached the vehicle, the suspect was no where in sight. It was felt by the officers that the suspect had entered one of the buildings. The officers then examined the vehicle which was locked and observed the butt of a gun sticking out from under the front seat. Officers Galluba and Schwarz then scouted themselves in a near by Freight entrance awaiting the return of the suspect Simpson. At approximately 15 minutes later, the officers observed the suspect Simpson approaching his vehicle. The officers waited until he approached the drivers side door when they apprehended him making sure that he didn't gain access to the gun under the seat. The officers then recovered a imitation .45 calibre pistol, two sets of license plates, three complete changes of clothing and a wallet that belong to the other perpetrator Bryant. He was placed under arrest and all three perpetrators were brought to the 13th Precinct for processing. All three prisoners were turned over to the F.B.I. Special Agent Carbone.

4. The three prisoners were arraigned in Southern District Court and held in \$10,000 bail. Federal Prosecutor John Flanny informed the officers that all three prisoners were also wanted in connection with bank robberies in New York and New Jersey Areas. He further stated that the demand note which Sergeant Henry had retrieved has been used to other notes that have been used in previous bank robberies. In addition all three prisoners have been arrested previously for robbery, assault and weapons charges.

5. Based upon the above circumstances the officers are to be commended for their actions in apprehending three perpetrators of a bank robbery in a truly professional and expeditious manner with a minimum of force and no injury to anyone while in grave personal danger of their lives as the perpetrators had in their possession a United States Ordnance hand grenade and imitation .45 calibre revolver.

SERGEANT WILLIAM HENRY

PAGINATION AS IN ORIGINAL COPY

1/3/75

v.
Rampson
George Cooper

Sergeant William Henry

1 pgsr

Henry - direct

70

75 Cr. 436

W I L L I A M H E N R Y , called as a witness in

behalf of the Government, after having been first duly
sworn, testified as follows:

THE WITNESS: My shield number is 1089; I am
assigned to the Thirteenth Precinct, New York City Police
Department.

THE COURT: Officer, I say this to all witnesses:

As you well know, having testified in other courts
as well as this court, you cannot give answers that are not
called for by questions. Out in the street you can talk
liberally and freely about a matter and yet you cannot do
it that way on the witness stand. Why? Because there are
certain Rules of Evidence that make certain statements
inadmissible.

Please remember wherever you can to answer yes or
no. Wherever you can, if that is the fact, state whether or
not you have a recollection or you don't remember. Wherever
you can you will avoid explaining unless an explanation is
called for and the Court tells you to go ahead.

Do you understand that? You are to stick to the
question. That is the guideline.

Thank you.

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2 pgsr Henry - direct

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DIRECT EXAMINATION

BY MR. VIZCARRONDO:

Q Sergeant Henry, by whom are you employed?

A New York City Police Department.

Q How long have you been employed by the New York City Police Department?

A A little over fourteen years.

Q What jobs have you held with the New York City Police Department?

A For six years I was a uniformed patrolman, and for six years I was with public morals, and the last four years I have been a sergeant working as an anti-crime supervisor in civilian clothes.

Q What have been your duties for the last four years?

MR. HERWITZ. I object, your Honor.

THE COURT: Objection overruled.

A I supervise a unit consisting of a patrolman and a detective who work in civilian clothes trying to blend in an area to prevent crime and apprehend perpetrators of crimes.

Q What precinct are you assigned to?

A Thirteenth Precinct.

Q I show you Government Exhibit 1 for identification. Can you identify that?

THE COURT: Yes or no.

1
2 A Yes.

3 Q What is it?

4 A It is a map depicting a portion of the Thirteenth
5 Precinct from Fifth Avenue to Gramercy Park East, from
6 18th Street to 23rd Street.

7 Q Does this diagram accurately indicate the location
8 of the Chase Manhattan Bank on Fifth Avenue?

9 A Yes, it does.

10 Q Does it accurately indicate the location of the
11 Chemical Bank?

12 A Yes, it does.

13 Q Does it accurately indicate the Manufacturers
14 Hanover Trust?

15 A Yes.

16 Q Does it accurately indicate the direction in which
17 these streets run, the traffic?

18 A Yes.

19 THE COURT: Mr. Gipson, that will be shown to you.

20 MR. GIPSON: I want to look at it while the witness
21 is testifying.

22 THE COURT: Keep your seat.

23 MR. VIZCARRONDO: The Government offers Exhibit 1
24 into evidence.

25 THE COURT: By the way, Mr. Vizcarrondo, your

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4 pgsr

Henry - direct

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questions dealt with the present tense. Banks have branches that open and close. I presume you are concerned with those banks as of the day in question.

MR. VIZCARRONDO: Yes. I will ask the question to make sure.

Q Does it accurately portray the locations of these bank branches on April 24th, 1975?

A Yes.

Q And the direction in which traffic flowed on that day?

A Yes.

THE COURT: Show it to counsel for the defense. You may examine it.

MR. GIPSON: The defendant Bryant has no objection to it.

THE COURT: It will be received in evidence.

[Government Exhibit 1 received in evidence.]

THE COURT: Ladies and gentlemen, you understand when a paper is marked for identification, but when that paper is received in evidence it is as much a part of the trial as the testimony from the witness stand. You will have a right to examine it to your heart's content. It is now a part of the trial record.

Next question.

1 5 pgsr

Henry - direct

74

2 MR. VIZCARRONDO: Your Honor, I have made copies
3 of Government Exhibit 1. I ask that I be permitted to hand
4 them to the jury and to counsel to aid in following the
5 testimony.

6 THE COURT: Very well. You may have them dis-
7 tributed.

8 [Pause.]

9 Q Sergeant Henry, I show you what has been marked
10 as Government Exhibit 2 for identification. Can you identify
11 that?

12 A I can identify it.

13 Q What is it?

14 A It appears to be a layout of the Manufacturers
15 Hanover Trust Bank at 19th Street and Fifth Avenue.

16 MR. GIPSON: I object to that. The witness has
17 testified that "it appears to be." Either he can identify
18 it or he cannot.

19 THE COURT: Objection sustained.

20 Strike the answer and the jury will disregard it.

21 Q Are you familiar with the layout of the Manufac-
22 turers Hanover Trust Company Branch located at 18th Street
23 and Fifth Avenue?

24 A Yes, I am.

25 Q Can you identify Government Exhibit 2?

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6 pgsr

Henry - direct

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A Yes, I can.

Q What is it?

A It is the layout of the Manufacturers Hanover Trust at 18th Street and Fifth Avenue.

THE COURT: On April 24th of this year?

THE WITNESS: Yes.

Q Does it accurately show where the doors of that branch are located?

A Yes.

Q Does it accurately show where there are tellers' windows in that branch?

A Yes, it does.

MR. VIZCARRONDO: The Government offers Exhibit 2 for identification.

THE COURT: I am sorry to be so insistent. When you read the cold record it leaves doubt as to whether or not you are talking about today or as of that time. Even though it is repetitious I think that caution would dictate that you refer to the date repeatedly so as to make it crystal clear as to what time we are concerned with with respect to anything that comes out.

MR. VIZCARRONDO: Thank you, your Honor.

Q Does Government Exhibit 2 for identification accurately show the portion of the doors, the Fifth Avenue

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7 pgsr

Henry - direct

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window, and the tellers' windows in that branch on April 24, 1975?

A Yes, it does,

MR. HERWITZ: The defendant Best has no objection.

MR. CONCANNON: No objection with respect to the defendant Simpson.

MR. GIPSON: No objection for the defendant Bryant.

THE COURT: Thank you, gentlemen.

[Government Exhibit 2 received in evidence.]

MR. VIZCARRONDO: Your Honor, I have also made copies of Government Exhibit 2 for identification and I ask that I be allowed to pass them out.

THE COURT: We are obliged to you. Please do so.

[Pause.]

Q Sergeant, I direct your attention to April 24, 1975, approximately 1:20 in the afternoon. Where were you at that time?

A I was on a patrol in a Yellow New York City Department Taxi Cab waiting for a light at the corner of 20th Street and Fifth Avenue.

Q When you say "New York City Department Cab", you mean a New York City Police Department Taxi Cab?

A Yes.

Q What street was that on?

A On 20th Street and Fifth Avenue, on the west side of Fifth Avenue.

Q What direction was the taxi cab pointed in?

A Facing east.

Q Was there anybody else in the cab with you?

A Yes, there was.

Q Who?

A Officer Reddy and Officer Galluba.

Q Where were each of these seated?

A Officer Galluba was in the driver's seat; Officer Reddy was in the left rear seat.

Q How were the three of you dressed?

A Casually dressed.

Q In civilian clothes?

A Yes.

Q Sergeant, what, if anything, did you observe at that time?

A I observed two males walking west on 20th Street crossing Fifth Avenue, passing the Chemical Bank located at the corner of Fifth Avenue and 20th Street. The two males, as they passed the 20th Street entrance of the bank peered into the bank, walked approximately ten feet past the 20th Street door, stopped, made an about-face, and started to

walk east on 20th Street.

Q What, if anything, did you observe next?

A One of the males entered the bank and the second male continued east on 20th Street crossing Fifth Avenue towards Broadway.

Q Do you see the man who entered the Chemical Bank in the courtroom today?

A Yes.

Q Point him out, please.

A The gentleman in the red suit or burgundy suit [indicating.]

MR. VIZCARRONDO: May the record reflect the witness has identified the defendant Bryant.

THE COURT: That is correct.

Q Sergeant, do you see the other man in the courtroom today?

A Yes.

Q Point him out.

A The gentleman with the pin-striped suit.

MR. VIZCARRONDO: May the record reflect the witness has identified the defendant Best.

THE COURT: That is correct.

Q What, if anything, happened after you observed Bryant enter the Chemical Bank?

2 A Officer Reddy emerged from the cab and entered the
3 bank keeping the defendant Bryant under observation.

4 MR. HERWITZ: I object to that.

5 MR. GIPSON: I object to that.

6 MR. HERWITZ: I move to strike it out, the latter
7 part of the answer.

8 THE COURT: The objection is sustained. The
9 latter part of the answer is stricken. The jury will dis-
10 regard it, as to what Officer Reddy observed.

11 Q What, if anything, did you next observe?

12 A I observed the defendant Best continue east on
13 20th Street and stop about three-quarters of the way down
14 the block, have a conversation with a male in an auto with
15 the motor running.

16 Q What did you do --

17 MR. HERWITZ: If your Honor please, the witness
18 has said he observed.

19 THE COURT: I heard him. What is your point?

20 MR. HERWITZ: About the motor running, your Honor.
21 I object to that.

22 THE COURT: That's a matter of cross-examination.
23 Any objection thereto at this time, on that score, is over-
24 ruled. You will be permitted to attack it or do anything
25 you wish within the recognized principles of law when your

2 time comes.

3 Q What, if anything, did you do next?

4 A I proceeded with Officer Galluba to Broadway, made
5 a right on Broadway, and parked the auto on the corner of
6 20th Street and Broadway, between 19th and 20th on Broadway.

7 Q Officer, could you make a mark, a "C", and a
8 Roman Numeral I where this car you observed was parked.

9 THE COURT: Do it on Exhibit --

10 Q Use Exhibit 1.

11 In what direction was it facing?

12 It was facing east.

13 THE COURT: Be good enough to show that to counsel
14 and then to the jury.

15 MR. VIZCARRONDO: Yes, your Honor.

16 [Pause.]

17 THE COURT: Now be good enough to hand it to the
18 jury.

19 Jurors, you already have a copy of Exhibit 1. The
20 reason you are now getting the original is that there has
21 been a mark just made on it by the witness and he wants you
22 to examine the mark with reference to his testimony.

23 May I suggest that two of you do so at a time
24 without rushing yourselves.

25 Q Sergeant what, if anything, did you do after you

1 parked the taxi on Broadway?

2 A I got out of the taxi and kept the defendant Best
3 under observation.
4

5 Q What did Officer Galluba do?

6 A He was in the auto and he was in and out of the
7 auto at different times. He was making observations.
8

9 MR. GIPSON: I object to that.

10 THE COURT: Don't say what he was making. You
11 don't know what he was doing except what your eyes beheld.
12 What did you see him do? That's all you can tell
13 us.

14 THE WITNESS: I seen him get out of the auto and
15 look in the direction of the defendant Best.

16 Q Where were you when you observed the defendant
17 Best?

18 A I was on the corner of 20th Street and Broadway
19 peering through a window on the corner.

20 MR. HERWITZ: I can't understand the last answer.

21 THE COURT: Read it, Mr. Reporter.

22 [Record read.]

23 Q What did you see?

24 A I saw the defendant Best have a conversation with
25 a man in an auto and then he proceeded to the south side of
20th Street. He took up a position in which he would have

2 a view of both the front and the side entrance of the bank
3 located at 20th and Fifth Avenue.

4 MR. HERWITZ: I object to that. I move to
5 strike out the answer.

6 THE COURT: The objection is sustained.

7 Strike the latter part of the answer in which the
8 witness tell; us about a position that would enable such and
9 such a thing to happen or take place. All of that is dis-
10 regarded.

11 When the Judge says, "Disregard," he means chuck
12 it out of your head as though it was never there. We don't
13 know what a witness is going to say suddenly. The only way
14 we can avoid that, do the best when something has happened,
15 is to say to the jury, "You heard that and it does not
16 belong. Disregard it." I know you are under oath and that
17 you will do exactly that and nothing less.

18 Please remember, Sergeant, and act accordingly.
19 You see why the law is as cautious as it is. You don't
20 know what was in another fellow's eyes. You can see him
21 standing at a certain place. You can tell that, but what
22 he beheld with his eyes you cannot say, so you must avoid
23 such reference.

24 Q Sergeant, when the defendant Best walked to the
25 south side of the street in what direction did he face?

1
2 A He faced west.

3 Q Is that towards Fifth Avenue on the Chemical
4 Bank?

5 A Yes, sir.

6 Q What did you see next?

7 A I saw the defendant Bryant come out of the Fifth
8 Avenue entrance of the Chemical Bank, make a motion to
9 Bryant. Bryant proceeded --

10 Q Who made a motion?

11 A Bryant made a motion to Best, to the defendant
12 Best, as he came out of the bank.

3 13 THE COURT: Show us what you mean by a motion.

14 THE WITNESS: A hand signal .

15 THE COURT: Don't confine it. What do you mean?
16 Show us. Was it with a raised hand?

17 THE WITNESS: A raised hand.

18 THE COURT: Imitate the gesture .

19 THE WITNESS: [Indicating.]

20 THE COURT: The jury saw it.

21 Next question.

22 Q What did you observe next?

23 A I observed the defendant Best return to the auto
24 that was parked between Fifth Avenue and Broadway and have
25 another conversation with the male in the auto and then

proceed to Fifth Avenue where he joined the defendant Bryant and he continued north on Fifth Avenue.

Q Sergeant, can you describe this auto that the defendant Best went to?

A It was a tan Pontiac, an old tan Pontiac.

Q What, if anything, happened after the defendant Best proceeded to Fifth Avenue?

A To Fifth Avenue?

Q Yes.

A At that time either I had radio communication or I instructed --

THE COURT: Careful. Careful. Careful. The Judge cautioned you at the beginning. Don't say anything you are not asked for.

[Record read.]

THE COURT: That's all he asked you, not what you did. It is a general question. Maybe that's the fault. I will ask the Government to be good enough to withdraw that question and put another question that is more specific. It is too general.

Q What, if anything, did you do next?

MR. HERWITZ: I object, if your Honor please. I think the question should be what he observed .

THE COURT: Objection overruled .

What did you do next?

A I had radio communication with another unit.

Q What, if anything, did you do next?

A I proceeded to Fifth Avenue where Officer Reddy --
I proceeded to Fifth Avenue and proceeded north on Fifth Avenue.

Q Where was Officer Galluba when you proceeded to Fifth Avenue?

A Officer Galluba was at the corner of 20th Street and Broadway.

Q What did you do when you arrived at Fifth Avenue and proceeded north?

A Between 20th and 21st Street I observed the defendant Best and the defendant Bryant walking in my direction.

Q What side of Fifth Avenue were they on?

A On the west side of Fifth Avenue.

Q What, if anything, did you do next?

A I ducked in a doorway and waited for them to pass.

Q What happened next?

A The two defendants passed. Officer Reddy passed.
I had a short conversation with Officer Reddy. At about that time Officer Ricciardi appeared on the scene at 20th Street and Fifth Avenue.

Q What happened next, sergeant?

A I motioned to Officer Ricciardi to follow the two defendants.

Q What happened next?

A Officer Ricciardi crossed over from the east side of Fifth Avenue to the west side of Fifth Avenue and proceeded to follow the defendants south on Fifth Avenue.

Q What did you observe next?

A I observed the defendants Best and Bryant enter the Manufacturers Hanover Trust Bank located at 18th Street and Fifth Avenue.

Q What door of the bank did they enter?

A They entered the front door.

Q On Fifth Avenue?

A On Fifth Avenue.

Q What did you do after that?

A I peered into the window and through the door of the bank.

Q What did you see inside the bank?

A I observed the defendant Best on the teller feeder line, and I observed the defendant Bryant in the rear of the bank in conversation with a uniformed guard.

Q When you say you observed the defendant Best on a teller feedline, what is that?

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2 A They have a line roped off where if you are going
3 to conduct business in a bank you wait on a line, and whatever
4 teller opens up they direct you to that window.

5 Q You testified that you saw the defendant Bryant
6 next to a guard. Were there any other guards in the bank
7 at that time?

8 A I didn't observe any other guards, no.

9 Q Was the defendant Bryant facing you or did he have
10 his back to you?

11 A He had his back to me.

12 Q What, if anything, did you observe next?

13 A I observed the defendant Bryant with his left hand
14 in his left coat pocket and his right arm appeared to be
15 around the uniformed guard's waist with his hand in the
16 proximity of the officer's revolver.

17 Q What, if anything, did you observe next?

18 A I observed him walk with the guard to an alcove
19 in the rear of the bank.

20 Q Can you make a mark on Government's Exhibit 2,
21 with the letter "B", where you saw the defendant Best on the
22 line?

23 A Approximately here [indicating.]

24 Q Can you make a mark, a "BR" and a "G" where you
25 first saw the defendant Bryant and guard?

2 A [The witness indicated.]

3 Q Can you draw a line in the direction where you saw
4 the defendant Bryant and the guard walk?

5 THE COURT: Make an arrow of that line, please.

6 A [The witness indicated.]

7 THE COURT: Show it to counsel first, please.

8 [Pause.]

9 MR. HERWITZ: I have no objection.

10 THE COURT: I didn't ask you that. It is in
11 evidence. I just wanted you to see the marking.

12 MR. HERWITZ: As soon as there was quiet I wanted
13 to announce that I have no objection. I'm sorry, your Honor.

14 THE COURT: Show it to the jury. Counsel have
15 examined it.

16 MR. GIPSON: We have no objection, your Honor.

17 THE COURT: There is no issue as to an objection.
18 The point merely is to familiarize yourself with what is going
19 on here and you are entitled to see it first so that you
20 can be familiar with what the witness has done.

21 Now show it to the jury.

22 [Pause.]

23 BY MR. VIZCARRONDO:

24 Q Sergeant Henry, what did you see after you saw
25 Bryant walk to the back of the bank with the guard?

2 A I saw -- I proceeded --

3 THE COURT: What did you see?

4 MR. VIZCARRONDO: I will withdraw the question,
5 your Honor.

6 THE COURT: Withdrawn.

7 Q What did you do after you saw Bryant walk to the
8 back of the bank with the guard?

9 A I turned the corner of 18th Street.

10 Q What did you see at that time?

11 A I saw the defendant Best leave the bank from the
12 18th Street entrance.

13 Q What did you see next?

14 A The defendant Best walked in my direction.

15 Q What, if anything, did you do next?

16 A I stopped and frisked the defendant Best.

17 Q What, if anything, did you do next after you frisked
18 the defendant Best?

19 A I told Officer Ricciardi --

20 THE COURT: No, no. Don't tell us what conversa-
21 tion you had with another officer. That is out of the
22 presence of the defendants and not binding on them at all.

23 Q What, if anything, did you see next?

24 A Officer Ricciardi and Officer Reddy stopping the
25 defendant Bryant.

Q What, if anything, did you do after Officer Ricciardi and Officer Reddy stopped Bryant?

A I proceeded to where they were standing with the defendant Bryant.

THE COURT: This is a lovely room. They don't make them like this any more. However, if they can't do a better job of acoustics then it is all for the better. Keep your voice up, please.

Read the last question and answer, Mr. Reporter.

[Record read.]

THE COURT: Where were they standing at that particular moment?

THE WITNESS: They were standing west of the Eighteenth Street entrance.

THE COURT: How far west?

THE WITNESS: I would say approximately five feet.

THE COURT: Thank you.

Next question.

Q What, if anything, did you see as you walked Best towards where Officer Reddy and Officer Ricciardi were frisking Bryant?

A I observed the defendant Best attempt to discard a white piece of paper from his right jacket pocket.

Q What did you do then? .

A I retrieved the piece of paper and continued to -- continued to where the two officers were holding the defendant Bryant.

THE COURT: Where was the piece of paper you say you retrieved? Where was it when you retrieved it?

THE WITNESS: On the pavement, your Honor.

Q You saw Best take a piece of paper out of his pocket?

A Yes. He slid it out of his pocket.

Q Did you see him drop it?

A Yes.

THE COURT: That was all within your vision?

THE WITNESS: Yes.

THE COURT: Did you follow the flight of that paper?

THE WITNESS: Yes, I did.

THE COURT: Here is a piece of paper [handing]. Re-enact what you saw. Be good enough to stand up so that the jury can see you.

THE WITNESS: The defendant Best was directly in front of me. He slid the paper out of his pocket with his right and dropped it to the pavement [indicating]. I bent down and retrieved it with my left hand.

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2 THE COURT: Did you immediately bend down to
3 retrieve it?

4 THE WITNESS: Yes.

5 THE COURT: Very well. You may take your seat.

6 Q What did you do next?

7 A I proceeded to where Officer Ricciardi and Officer
8 Reddy were holding Bryant. Then I had radio communication
9 with two other units.

10 Q What did you do with the piece of paper that you
11 picked up?

12 A I handed it to Officer Reddy.

13 Q What did you do after that?

14 A After that I proceeded to 105 East 19th Street.

15 Q What, if anything, did you observe there?

16 A I observed the auto that was parked, originally
17 parked, on the north side of 20th Street between Fifth
18 Avenue and Broadway, parked in front of 105 East 19th Street.

19 Q Did you meet with anybody there?

20 A Yes.

21 Q Whom did you meet with?

22 A Officer Galluba and Detective Schwartz.

23 Q Was the car occupied?

24 A No, it was not.

25 Q What, if anything, did you do after that?

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Henry - direct

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A After that I proceeded to the Thirteenth Precinct
Stationhouse.

MR. VIZCARRONDO: I have no further questions of
this witness, your Honor.

2

THE COURT: Cross-examination, gentlemen.

3

MR. CONCANNON: May I have a moment, your Honor?

4

THE COURT: Certainly.

5

(Pause)

6

MR. CONCANNON: Your Honor, I have no questions of Sergeant Henry.

8

THE COURT: Would you be good enough to oblige me and say that the defendant so-and-so has no questions?

9

10

And you, Mr. Vizcarrondo, no matter how often they have to repeat the names, have your witnesses constantly repeat names rather than "two defendants," and so forth. Repeat them over and over again so we don't make any mistake as to what is being said.

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MR. CONCANNON: Mr. Simpson has no questions of Sergeant Henry.

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THE COURT: Very well.

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1 pgsr Henry - cross 94

CROSS-EXAMINATION

BY MR. HERWITZ:

Q Officer Henry, my name is Victor Herwitz and I am the attorney for the defendant Best. I want to ask you some questions relative to your testimony.

You testified on your direct examination that you observed the defendant Best and the defendant Bryant enter the Manufacturers Hanover Bank at Eighteenth Street and Fifth Avenue; is that correct?

A Yes, sir.

Q And that you stationed yourself initially in front of the bank on Fifth Avenue?

A No. I didn't station myself there. I took periodic looks.

Q You didn't want to be obviously a policeman looking; is that right ?

A That's correct.

Q How long would you say the defendants Best and Bryant were in the bank from the time they entered on Fifth Avenue, as you testified, until they left it on Eighteenth Street, or Best left it on Eighteenth Street?

A I would say approximately a minute and a half.

Q During that minute and a half, do I understand, you did not continually stay in front of the bank looking

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pgsr

Henry - cross

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into the bank?

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A No, I didn't.

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Q About how much of that minute and a half did you devote to looking into the bank?

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7

A I was not in front of the bank a minute and a half. I said they were in the bank a minute and a half.

8

9

Q How much time were you in front of the bank?

10

A Approximately thirty seconds.

11

12

Q You said that during the thirty seconds you didn't keep the defendants continuously under observation; is that right?

13

14

A No.

15

16

Q About how many seconds of the thirty seconds that you were in front of the bank did you keep either Best or Bryant under observation?

17

18

A Maybe twenty seconds.

19

20

Q Were you alone or were you with any of your colleagues at that time?

21

22

A I was with Officer Ricciardi and Officer Reddy.

Q Were they right with you?

23

24

A No.

25

Q Where was Officer Ricciardi when you were in front of the bank?

A I was not paying too much attention.

Q If you don't know --

A As to where he was, I don't recall.

Q Where was Officer Ricciardi, if you know?

A I don't recall. He was either at Eighteenth

Street --

THE COURT: "I don't recall" is the answer.

Next question, please.

Q Do I understand correctly that when you testified

on direct examination as to what you observed in the bank

you were talking about your observation which went on for

a maximum of twenty seconds?

A That's correct.

Q Was it continually twenty seconds or was there a

break in those twenty seconds?

A There was a break in those twenty seconds.

Q How many times did you look in? Once or twice?

A Twice or three times.

Q Twice or three times?

A Right.

Q In other words, each time you looked in it was

really, virtually, a glance that took a few seconds; is

that right?

A No.

Q What was the longest continuous period of time,

as best as you can estimate, that you looked into the bank and saw either the defendant Best or the defendant Bryant?

A Approximately six or seven seconds.

Q During the total of the twenty seconds that you looked in the bank what did you see the defendant Best do?

A I saw him stand on the feeder line. That's all I saw him do.

Q Did you see him approach a teller?

A No, I didn't.

Q Did you see him put his hand in his pocket in any threatening way?

A No, I didn't.

Q Did you see Best talk to anybody?

A No, I didn't. Most --

THE COURT: "No, I didn't," is the answer.

Next question.

Q With respect to Bryant, did you have him under observation a total of twenty seconds or less?

A Yes.

Q You didn't see him do anything but apparently be in the proximity of one of the guards; is that correct?

MR. VIZCARRONDO: Objection, your Honor. That's a mischaracterization of the witness' testimony.

THE COURT: Sustained.

pgsr

Henry - cross

Q You saw Bryant in the vicinity or near one of the guards; is that right?

A Yes.

Q I think you testified that he had his hand in his pocket?

A His left hand was in his left overcoat pocket.

Q Did you see him take his hand out of his pocket?

A Not his left hand.

Q What did you see him do with his right hand?

A His right hand appeared to be around the guard's waist in the proximity of the guard's revolver.

Q Was the guard facing him, as you could observe it?

A No. The guard was facing the rear of the bank and the defendant was facing the rear of the bank.

Q It is your testimony that he was standing behind the guard?

A Side by side.

Q And then what did you observe him do?

A Walk with the guard into an alcove and then I lost sight of him.

Q When you saw Bryant and the guard walk into the alcove, did you observe what Best was doing or where he was?

A At that point, no.

Q Then you testified you went around to the Eighteenth.

Street side of the bank; is that right ?

A I walked around the corner, yes.

Q How far around the corner did you walk? Did you walk towards the exit on Eighteenth Street, the entrance?

A I walked around the corner, about three or four steps.

Q According to the map --

THE COURT: Which exhibit?

Q According to Exhibit 2 there is an entrance to the bank, or an exit to the bank, on Eighteenth Street; is that right?

A That's correct.

Q Approximately how far from the corner is that?

A I would say approximately fifty feet.

Q How far into Eighteenth Street did you walk from Fifth Avenue?

A Initially?

Q Yes..

A Three or four steps; six or eight feet.

Q So you were standing, would it be, 40 or 45 feet from the entrance, the Eighteenth Street entrance, to the bank when you saw Best emerge from it?

A That's correct.

Q When Best came out of that bank did he run out?

A He was walking at a rapid pace.

Q Did you then decide to arrest him?

A No, I didn't.

Q You didn't consider you had cause to arrest him,
did you?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: Be careful. That's a bad ground,
if I may suggest. The objection is sustained.

Next question.

Q What did you do then?

A I stopped, questioned and frisked the defendant.

THE COURT: Give me the name of the defendant.

THE WITNESS: The defendant Best.

Q You stopped and what?

A Questioned and frisked him.

Q When you say you stopped and questioned, tell the
Court and jury exactly what you did and what you said.

A I identified myself as a police officer. At that
time I thought my life was in danger.

Q I didn't ask you what you thought. What did you
say and do?

MR. HERWITZ: I move to strike that out as the
operation of his mind.

THE COURT: Objection sustained.

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Henry - cross

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The jury will disregard that portion just given of the answer in which the witness told us about danger. That must be disregarded.

Q You say you showed him your shield.

A That's correct.

Q What did you say to him?

A "Police officer."

Q Anything else?

A And then I began to frisk the defendant.

Q When you say you began to frisk him, did you put your hands on him?

A Yes. I did.

Q Did you stop him from moving?

A He was stopped.

Q Did you tell him not to do anything?

A I just said, "Police officer," and he stopped.

Q When you say you frisked him, you mean you ran your arms or your hands up and down his clothes?

A Yes.

Q Did you find anything suspicious in the frisk?

A No, I didn't.

THE COURT: May I suggest, Mr. Herwitz, you go back to the lecturn. He drops his voice and it becomes a conversation between you and the witness. You make that

lectern your happy hunting ground; get in back of it and don't start lecturing us. Get in back of it, please. That gives you a chance to lean and support yourself.

Please proceed.

MR. HERWITZ: I do need that.

Q Do I understand that you put your hands on him to frisk him? Did you find anything that you thought threatened your life as a result of the frisk?

A No, I didn't.

Q After you completed your frisk, did you tell him to come with you?

A Before --

THE COURT: Did you tell him to come with you? That's all that was asked. That's all that you have before you.

A [continuing] No.

Q Did you keep your hands on him?

A No, I didn't.

Q What did you say to him?

A I asked him to accompany me to where the other two officers were holding the defendant Bryant.

Q How far from you were the other two officers with the defendant Bryant?

A Approximately 50 feet.

Q So your testimony is that after you stopped him and frisked him you said to him -- Tell me exactly what you did say to him.

A I don't remember the exact words, but I asked him to accompany me to where the officers were holding the defendant Bryant.

Q You ordered him to do it?

A No, I didn't order him.

Q It was a request?

A Yes.

Q Could you tell us the tone of voice in which you made that request, if you can recall?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: It is cross-examination. I will allow it.

A Normal tone.

Q Did you have your gun out?

A No, I didn't. It was not in sight.

Q Was it while he was accompanying you towards where Mr. Bryant was being held by the officers that you testify he took the piece of paper out of his pocket, or tried to?

A Yes, it is.

Q How many feet would you say you had walked from the time you had started to frisk him until the defendant

Best tried to take this piece of paper out of his pocket?

A I would say approximately 10 or 15 feet. I am just guessing.

Q You didn't tell him you were going to arrest him?

A No, I didn't.

Q Before he took this piece of paper out of his pocket, or tried to put it to the ground, you didn't tell him he was under arrest, did you?

A No, I didn't.

Q So, Officer, after you had stopped him and frisked him -- you can think back to your own state of mind at that time -- if he had wanted to leave would you have let him?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: The objection is overruled. I will allow it.

What is your answer?

A No, I would not.

THE COURT: Next question.

MR. HERWITZ: I have no further questions, your Honor.

THE COURT: Mr. Gipson, you may cross-examine.

CROSS-EXAMINATION

BY MR. GIPSON:

Q Sergeant Henry, you made some statement to the FBI regarding this event; is that right?

A Yes, I did.

Q I show you one that appears to be on 8-1/2 by 14 --

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: Mr. Clerk, mark the papers which Mr. Gipson is about to hand to the witness. Mark it as his client's exhibit for identification.

(Defendant Bryant Exhibit A marked for Identification.)

THE COURT: Come up to the side bar, gentlemen.

(At the side bar.)

THE COURT: What is Exhibit A for Identification, please?

MR. GIPSON: It is a short statement that the witness made on April 28 concerning his recollection of the incident, and the next statement he gave appears to be three pages in more detail, but I don't know the date.

THE COURT: Also made by this witness?

MR. VIZCARRONDO: I would point out that the witness has not indicated now that he needs his memory re-

freshed in any manner.

MR. GIPSON: I am going to cross-examine him with respect to the freshness of his recollection.

MR. VIZCARRONDO: The usual procedure is for counsel to cross-examine the defendant and then --

THE COURT: Yes. My suggestion would be that you first put your questions to the witness, and if you find it necessary to refresh his recollection on the basis of what he reveals on the stand, then I would also suggest that you confront him with any statement -- not only those you referred to but any other statement. I think you are putting the cart before the horse the way you are going about it.

MR. GIPSON: I would indicate the direction I am going: Merely whether the witness made a statement, and I would go into the area, and if it is necessary I would have the exhibit, the second exhibit, marked for identification and proceed with my cross-examination from that

MR. VIZCARRONDO: Your Honor, most of these exhibits have been marked as 3500 material. I think that counsel should state to what he is referring so that other counsel can follow.

MR. GIPSON: We have two statements from the witness. One has a date and the other has not.

THE COURT: Try it out the way I suggest. I think

you remember the questions, and when you find that the witness has said something you think is contrary to anything he said on another occasion, or wrote in a report, then you may confront him with it.

MR. GIPSON: Fine.

(In open court.)

BY MR. GIPSON:

Q Sergeant, you made two statements; is that right?

A Two statements to whom?

Q To the FBI agents.

A Could you rephrase that question?

Q Do you recall having made statements concerning this event?

A Yes.

Q With respect to your own investigation?

A Yes.

Q How many statements did you make?

A I don't recall.

Q Would it be fair to say there was more than one?

A Are you referring to two different agents?

Q Concerning the incident itself.

A Yes, more than one.

Q Do you recall that in one statement you referred to a vehicle that looked like an Oldsmobile?

2 A Yes.

3 Q Do you recall stating in another statement that
4 it was a 1972 Pontiac?

5 MR. VIZCARRONDO: I object to the form of the
6 question, your Honor.

7 THE COURT: That is contrary to what we discussed.
8 I sustain the objection.

9 You can bring that substance out in another way,
10 in the way it was suggested and to which you agreed. Try
11 it again, please.

12 Q Do you recall making one identification of the
13 motor vehicle?

14 A Yes.

15 Q What identification did you make of it initially?

16 A I said an Oldsmobile.

17 Q Do you recall subsequent to that identification
18 making another identification?

19 A No, I don't.

20 THE COURT: Of that same automobile.

21 THE WITNESS: Not to the FBI agents, no.

22 THE COURT: He didn't ask you whether you made it
23 to the FBI agents. Did you refer to that same automobile on
24 another occasion as a different car or a different manufacturer
25 than what you had first declared? That's all I am asking.

1 THE WITNESS: Yes.

2 THE COURT: What did you say on the second occasion
3 with regard to that same car?

4 THE WITNESS: It was a 1972 Pontiac.

5 BY MR. GIPSON:

6 Q So would it be fair to say that initially when
7 you saw the car you were not aware that it was a 1972 Pontiac;
8 is that right?

9 A No, I was not.

10 Q It appeared to be an Oldsmobile --

11 MR. VIZCARRONDO: Objection, your Honor.

12 THE COURT: What is the basis of your objection?

13 MR. VIZCARRONDO: In the characterization of the
14 question, what the car appeared to be to the witness.

15 THE COURT: I will allow it.

16 Read the question.

17 (Record read.)

18 A Yes.

19 Q Would it be fair to say that you were mistaken
20 about the identification of the car? Is that right?

21 A I was not sure of the identity.

22 Q You were not sure.

23 Had you seen Mr. Bryant prior to that occasion?

24 A No, I didn't.

2 Q Do you recall what he was wearing on that day?

3 A Mr. Bryant? He was wearing a hat, a dark hat,
4 a topcoat, either dark gray or black. He was wearing high
5 heels, gray patent leather shoes, and sunglasses.

6 Q Do you recall anything else about his wearing
7 apparel?

8 A That's about all.

9 Q That's all you recall?

10 A That's all.

11 Q Approximately what time was it when you first
12 saw this person you identified as Mr. Bryant?

13 A Approximately twenty minutes after 1:00.

14 Q In the afternoon?

15 A That's correct.

16 Q Would it be fair to say that that particular area
17 of the city is relatively crowded at that time of the day?

18 A Yes.

19 Q This was a regular business day?

20 A That's correct.

21 Q Would it be fair to say that there were numerous
22 people around?

23 A That's correct.

24 Q And this was also the approximate time of lunch
25 hour; isn't that a fact?

1 pgds

Henry - cross

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2 A A little after that.

3 Q It is still in the vicinity, would you agree with
4 me, of lunch hour?

5 A In the vicinity.

6 Q When you first saw the person you identified as
7 Mr. Bryant, was he isolated or were there other people
8 around him, or how would you describe the background as far
9 as other people are concerned?

10 A There were other people on the street.

11 Q When you first saw him where was he at?

12 A He was crossing Fifth Avenue, approaching the
13 west side of Fifth Avenue, at 20th Street.

14 Q Was he alone?

15 A No. He was with the defendant Best.

16 Q What do you recall about the facial features of
17 the person you saw crossing the street that you identified
18 as Mr. Bryant?

19 A With the hat and sunglasses -- I don't recall
20 any of the facial features.

21 Q Therefore you never saw with clarity the facial
22 features of the person you identified as Mr. Bryant initially?

23 MR. VIZCARRONDO: Objection, your Honor.

24 A Initially.

25 THE COURT: Hold it. Don't answer when there is

2 an objection. He has to jump up.

3 The objection is overruled. I will allow the
4 answer.

5 Read the question and answer.

6 (Record read.)

B8 7 Q The person you saw, was his height extraordinarily
8 tall, short, or was he of average height?

9 A Average height.

10 Q Therefore it would be fair to say you saw an
11 individual of average height with a hat on and sunglasses;
12 is that right?

13 A That's correct.

14 Q You could not identify his facial features?

15 A That's correct.

16 Q What color was that hat?

17 A I believe it was gray or a color similar to that.

18 Q You are not sure of the color of the hat; is that
19 right?

20 A That's correct.

21 THE COURT: Mr. Gipson, as an accommodation to
22 me -- it is a habit, I am sure, on your part; I used to do
23 it too -- you are walking up and down and I want you to con-
24 tain yourself, if you don't mind, because I lose your voice
25 as you walk towards the witness room. Station yourself

2 right where I won't be missing anything.

3 Thank you.

4 Q Do you recall the style of the hat?

5 A No, I don't.

6 Q Do you recall the style of the topcoat?

7 A No, I don't.

8 Q Was it full-length or three-quarter or half?

9 A It was like a three-quarter length.

10 Q Where were the pockets?

11 A I believe they were on the right and left side.

12 I didn't examine the pockets.

13 Q Didn't you testify earlier the person you identi-
14 fied as Mr. Bryant had his hand in his coat pocket?

15 A It appeared to be in his coat pocket.

16 Q It appeared to be? Now you are not sure?

17 A His hand was out of sight.

18 MR. VIZCARRONDO: Objection, your Honor.

19 Q His hand was out of sight?

20 A Yes.

21 Q You are sure about that?

22 A That's correct.

23 Q You testified on direct examination that the
24 person you identified as Mr. Bryant had his right arm around
25 the waist of the bank guard; is that right?

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A That's correct.

Q You were on the outside of the bank at that time?

A That's correct.

Q Did that person have on a hat at that time? Did he have a top hat on at that time, the person you identified as Mr. Bryant?

A I don't recall.

Q You don't recall now whether he had a hat on?

A At that time.

Q Did he have sunglasses on?

A Yes, he did.

Q Can you describe the sunglasses, if you can remember?

A Normal type. Dark colored glasses.

Q Did he have a hat in his hand?

A No, he didn't.

Q As I recall, you testified that you only saw the back of the individual that had his arm around the bank guard; is that right?

A I saw his back and I saw a portion of the right side of his face.

Q When did you see the portion of the right side of his face?

A When the guard was on his right he was talking

2 with the guard.

3 Q At that time could you see his facial features?

4 A I saw the side of his face.

5 Q My question was whether you were able to see his
6 facial features at that time?

7 A No, I was not.

8 Q So, therefore, you still have not seen the face
9 of this man; is that right?

10 MR. VIZCARRONDO: Objection, your Honor.

11 THE COURT: The form is objectionable. Objection
12 sustained.

13 Reframe it, please.

14 MR. GIPSON: I will go to another line, your Honor.

15 Q The individual you initially saw walking across
16 the street with sunglasses and hat, are you absolutely
17 positive that is the same man you saw with his arm around
18 the bank guard?

19 A Yes, I am.

20 Q How are you so sure?

21 A His shoes stood out, because the shoes were very
22 uncommon and I had him in sight for a long period of time.

23 Q You cannot remember his facial features though?

24 A No.

25 Q Or what he was wearing other than what you

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Henry - cross

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testified?

A Right now I can't remember, no.

Q What was so uncommon about the shoes you observed?

A Highly shiny patent leather gray shoes, platform-type shoes.

Q You consider that to be uncommon today?

A Yes, I do.

Q Going back over your testimony on direct examination by the United States Attorney, as I recall you testified you observed a man you described as Mr. Bryant walking across the street looking into two banks and going into a third bank, put his arm around the guard, and subsequently was arrested.

MR. VIZCARRONDO: I object. It is a mischaracterization of the testimony.

THE COURT: Sustained.

MR. GIPSON: I only reiterate --

THE COURT: I made a ruling. If I am wrong your position will be held right and the judge wrong. All I can do is rule according to my oath. That's my ruling. The objection is proper and I have sustained the objection.

You have an opportunity to reframe your question.

Q Did this individual do anything other than what you testified to?

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2 A No, he did not.

3 Q At the time that you observed the two people
4 walking across the street --

5 THE COURT: Name them.

6 Q -- the two you have identified as Mr. Best and
7 Mr. Bryant -- were these individuals at all times in your
8 observation?

9 A At all times?

10 MR. VIZCARRONDO: Your Honor, I object. I ask
11 counsel to state what he means when he says --

12 MR. GIPSON: I will rephrase the question, your
13 Honor.

14 THE COURT: Very well. Thank you.

15 Q Considering the period of time between the time
16 you initially saw the two individuals and the time they were
17 arrested, taking into consideration the interim or lapse
18 of period of time, were those two individuals at all times
19 in your observation?

20 A No, they were not.

21 Q How much time elapsed between the time you initially
22 saw these two individuals and the time they were placed under
23 arrest?

24 A I would say approximately a half hour.

25 Q Approximately a half hour?

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Henry - cross

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A Yes.

Q Out of the span of that half hour of time, how much of that time was the individual you identified as Mr. Bryant in your personal observation?

A Approximately five minutes.

Q So, therefore, out of a total thirty minutes you observed the individual you identified as Mr. Bryant for a period of five minutes; is that correct?

A That's correct.

Q You testified that the individual you identified as Mr. Bryant you had observed him walk into two banks and go into a third bank?

A That's not right.

Q What did you observe during this five-minute period of time of the defendant Bryant?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: On what ground?

MR. VIZCARRONDO: What he observed in the five-minute period of time? What is he referring to?

THE COURT: Reframe it.

MR. GIPSON: Yes, your Honor.

Q What did you observe during that five-minute period of time of the party you identified as the defendant Bryant?

1 A I observed him enter one bank on 20th Street.
2
3 I observed him leave the bank. I observed him walk north
4 on Fifth Avenue, and I observed him walking south on Fifth
5 Avenue to 18th Street.

6 Q When he left that bank, when you observed him
7 leaving before he was apprehended, was he the only individual
8 leaving the bank at that time?

9 A Which particular bank are you talking about?

10 Q What bank did he enter? He looked into one.

11 A He entered two banks.

12 Q He looked into one and entered two; is that right?

13 A Yes. That I saw.

14 Q That you saw. You saw him go into the Chemical
15 Bank; is that right?

16 A That's correct.

17 Q You saw him go into the bank in which the party
18 that you identified as Mr. Bryant was in?

19 A Yes.

20 Q Taking into consideration the time you saw him
21 go into the Chemical Bank, did you see any other people
22 coming in and out of the bank at that particular time?

23 A There were other people coming in, but I was not
24 paying much attention to them.

25 Q How were you able to identify distinctly the

2 person you identified as Mr. Bryant from other individuals
3 going in and out of that bank at that time, the Chemical
4 Bank?

5 MR. VIZCARRONDO: I believe that that has been
6 asked and answered, your Honor.

7 THE COURT: Let him answer it.

8 A By his dress.

9 Q That would be by the hat which you can't recall
10 the color of.

11 A At this moment I can't recall the color. On that
12 day I knew the color, the coat, the shoes.

13 Q At that time you didn't recall his facial features;
14 is that right?

15 A No, I didn't.

B9 16 THE COURT: Mr. Gipson, I don't want to interrupt
17 you, but for my own guidance give me an idea of how much
18 more time you want on cross-examination.

19 MR. GIPSON: I don't know what time the Court
20 intends to break for lunch.

21 THE COURT: Give me an idea.

22 MR. GIPSON: Another fifteen or twenty minutes,
23 your Honor.

24 THE COURT: That's an answer to my question.
25 Thank you.

2 Ladies and gentlemen, I have another conference
3 that I must attend involving another case. I am going to
4 excuse you but I want everybody back here on the dot at 2:15.
5 I will arrange my own schedule. I will take a sandwich, if
6 any at all. I will be here at 2:15 and I want everyone here
7 at that time, all witnesses, and no delays will be countenanced.

8 Mr. Clerk, announce a recess to 2:15 sharp.

9 (Luncheon recess.)

10 (In the robing room.)

11 MR. CONCANNON: May I say something about
12 Mr. Simpson? This is with reference to who was concerned
13 with respect to that incident in the prison.

14 I did question him. I was anxious to find out
15 what he was doing over there.

16 Yesterday, I may point out, he was one of the first
17 two people here and, consequently, not the person involved
18 over there. This morning they transferred his room without
19 giving him his toothbrush or razor. He immediately asked
20 if he could wait until he could get those things. They made
21 no effort to get those things. He said he wanted his things
22 and that he wouldn't go to court without shaving or brushing
23 his teeth.

24 THE COURT: You saw fit to bring it up again.

25 The information imparted to me makes no difference

2 except as to the delay of the trial. That's my only concern.
3 If a defendant, while a prisoner awaiting trial, is not
4 treated properly, is not given things he feels he should have,
5 that's a problem that must be resolved, but it does not
6 excuse his failure to be here. That's all I want. I want
7 the case to go on promptly.

8 The information I have is to the contrary, but I
9 am not sure that those giving me the information would give
10 that testimony under oath. All I know is that that's the
11 information I got.

12 Let's forget that. I don't want to hold it against
13 anybody. I was not a party to it.

14 I want your help to be sure that the trial goes
15 on.

16 Counsel have seen fit to come in and talk to me
17 about the food problem. This gives me an opportunity to say
18 that the information imparted to me with regard to yesterday
19 was that one of these three defendants was an active partici-
20 pant in the fracas with regard to food. The food item was
21 broadcast at the close of the afternoon. I saw it myself
22 in the evening on television with regard to the protest and
23 demonstration of the kind of food that was being served, so
24 that such an event did take place yesterday where a number
25 of prisoners complained and caused a commotion and presented

2 quite a problem to the Correction people. In fact, that
3 was one of the reasons that they were not brought into the
4 courtroom yesterday for fifty minutes after the trial was
5 supposed to have started.

6 The attorneys are in here and they are saying,
7 in effect, and correct me if I am wrong, that their client
8 would like to get food from relatives or friends because
9 the clients are Muslims, of the Muslim faith, and they do
10 not believe in pork; they get pork in their food over at
11 the prison, and these well-wishers who want to help them
12 with food will give them the food they, as Muslims, can have
13 according to their religious scruples; isn't that the size
14 of it?

15 MR. HERWITZ: Yes.

16 MR. GIPSON: Yes.

17 MR. CONCANNON: My client has not mentioned it
18 to me.

19 THE COURT: Have you any objection to this food
20 being given to them?

21 MR. VIZCARRONDO: No objection, your Honor.

22 THE COURT: Be good enough to ask the marshal,
23 the chief marshal, to come in here now.

24 Off the record.

25 (Discussion off the record.)

2 THE COURT: What is your name?

3 THE MARSHAL: Francis Lopez.

4 THE COURT: It has come to my attention that these
5 defendants are Muslims, of the Muslim faith, and they cannot
6 eat according to their religion certain foods that are
7 served over at the prison, no matter how good those foods
8 are. There are well-wishers or family people, or somebody,
9 that want to be friends to these defendants and they have
10 brought food for them so that they can eat. It is all right
11 with me and I hope you can see to it that they do get this
12 food, but it is only subject to your examination. I don't
13 want any gun to pass or anything wrong to transpire. If all
14 these people want to do is help them by giving them food to
15 eat, that's all right with me. You have my permission pro-
16 vided it passes muster. You know what I mean by that
17 expression.

18 THE MARSHAL: As long as you tell us we will
19 comply. You are telling us to?

20 THE COURT: Yes. I am telling you directly, on
21 the record, to allow them to take this food provided you
22 find what is given to them is food.

23 THE MARSHAL: We will check it, your Honor.

24 THE COURT: Gentlemen, I will see you at the
25 proper time.

(Recess.)

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Henry - cross

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AFTERNOON SESSION

2:20 p.m.

(Jury in box.)

W I L L I A M H E N R Y, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. GIPSON:

Q Sergeant, during the course of the time that you observed the parties you have identified in the time that one or both of them were arrested, was Police Officer Reddy with you at all times?

A No.

Q During the portion of that half hour how much of that time was Police Officer Reddy with you?

A During that portion of the time? Three or four minutes.

Q Mr. Bryant was apprehended by whom?

A Officer Reddy and Officer Ricciardi.

MR. GIPSON: I have nothing further, your Honor.

THE COURT: Would the government care to question the witness on redirect examination?

MR. VIZCARRONDO: One small matter, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. VIZCARRONDO:

4 Q Sergeant, after you stopped the defendant Best
5 outside of the Manufacturers Hanover Trust Company on 18th
6 Street, did you observe anything in Officer Reddy's hand?

7 A Yes, I did.

8 Q What did you observe?

9 A I observed a metal object which appeared to be
10 a hand grenade.

11 Q Was this before or after you picked up the piece
12 of paper that Best dropped on the sidewalk?

13 A After.

14 Q How much after?

15 A Seconds.

16 MR. VIZCARRONDO: Thank you. I have no further
17 questions.

18 THE COURT: Is there any further recross-examina-
19 tion?

20 MR. CONCANNON: Mr. Simpson has none, your Honor.

21 RECROSS-EXAMINATION

22 BY MR. GIPSON:

23 Q Did you question Patrolman Reddy as to where he
24 had obtained the object he had in his hand?

25 MR. VIZCARRONDO: Objection, your Honor. I think

2 he is asking for hearsay.

3 THE COURT: I will take the answer just yes or no.

4 A No. I didn't question him.

5 THE COURT: What is the next question?

6 MR. GIPSON: Nothing further, your Honor.

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Henry - recross

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RECROSS-EXAMINATION

BY MR. HERWITZ:

Q Mr. Henry, did you make some statement in this case to the FBI?

A Yes, I did.

Q I show you --

THE COURT: Ask him what he said on such and such a point before you show him anything. Then, if you want to dispute what he has to say, show it to him. First, elicit what it is that you are pursuing.

Q On April 28, 1975, did you make a statement to the FBI in which you said, in substance, as follows: Relative to what had occurred at the Manufacturers Hanover Bank immediately before and after you stopped the defendant Best at the Eighteenth Street exit -- may I read it?

Henry advised that Irving talked with the guard while Best got in line for the teller's cage. At this time Henry thought Irving had a gun or weapon of some sort as he appeared to have his arm in an unusual position. At this time Henry advised he was standing at the side door of the Manufacturers Hanover Trust Company on Eighteenth Street when Best exited the bank and almost bumped into Henry. Henry advised he immediately placed Best under arrest and at this time Best and Irving were approximately 30 feet apart.

Do you remember making that statement, in substance, to the FBI on February 28, 1975?

A February 28? That's before the incident, counselor.

Q I'm sorry. April 28, 1975.

A April 28th I don't think I had any conversation with the FBI. Are you referring to April 24th?

Q On April 24th did you make that statement, in substance, to the FBI?

A To what agent?

THE COURT: He doesn't care what agent. Did you say to the FBI what he just mentioned?

THE WITNESS: Something similar to that, in substance.

Q Was that a statement that you made on the very day when this occurrence took place, April 24, 1975?

A In substance, yes.

Q When you made it, did you believe it to be true, in substance?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: The objection is overruled.

What is your answer?

A Did I believe it to be true?

THE COURT: Yes.

A [continuing] Yes, I did.

THE COURT: What is the next question?

Q Was it true?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: Was it true in fact?

THE WITNESS: To the best of my knowledge it was.

Q Did you further state, continuing:

Henry advised that Reddy was confronting Irving and he, Henry, walked towards Best and Reddy to bring the prisoners close together.

Did you say that in substance?

A Prisoners? No. I don't think so. I didn't say "prisoners." I don't believe I used that word.

Q What did you say with respect to that, if you can recall?

A I was bringing Best to where Officer Reddy and Officer --

Q Did you then say, in substance, to the FBI as follows:

As Henry advanced with Best towards Irving and Reddy, Best attempted to throw away an envelope?

A Yes.

Q Do you remember your saying that?

A Yes, I did.

Q Did you then say:

Henry retrieved the envelope and determined this to be the demand note?

A Yes, I did.

Q Is that true?

A That's true.

Q Did you then say this:

Upon nearing the proximity of Officer Reddy and Irving, Henry advised Best of his rights?

A I did not.

Q You didn't say that?

A No, I didn't.

Q Do you remember whether when you were interrogated by the FBI on the day of this occurrence you told the man who interrogated you that before you placed Best under arrest you had seen the alleged bomb, or hand grenade, taken from the possession of Irving? That refers to the defendant Bryant, does it not?

A Yes.

Q Do you remember when you were interrogated by the FBI on that day you told them you had seen the hand grenade before you arrested or placed Best under arrest? Did you tell them that?

A Yes, I did.

Q Did you make any statement at any other time to

anybody else, to any official, other than the statement you

made on April 24?

A I made statements to the United States Attorney.

Q In any statement that you made to the United

States Attorney, did you say what you just testified to on

redirect examination, that before placing Mr. Best under

arrest you had seen the alleged hand grenade or bomb, or

whatever it was, taken from Mr. Bryant?

A Yes, I did.

Q To whom did you say that?

A To the FBI agent. I didn't actually place him under

arrest.

Q I said before you placed Best under arrest.

A I never placed Best under arrest.

Q You never did?

A No.

Q I want to go back. When it says here in this

purported statement that you said Henry advised he immediately

placed Best under arrest, did you say that?

A No.

Q You never placed Best under arrest; is that what

you are saying?

A Officer Reddy did.

Q You didn't arrest Best?

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Henry - recross

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A No.

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MR. HERWITZ: No further questions.

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Henry - recross

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THE COURT: Is there anything further by the
government?

MR. VIZCARRONDO: No further questions.

THE COURT: Is there anything further by any
counsel?

MR. GIPSON: I have one question, your Honor.

THE COURT: Yes. Proceed.

FURTHER RECROSS-EXAMINATION

BY MR. GIPSON:

Q Sergeant Henry, do you know which of the two
officers, Patrolmen Reddy and Ricciardi, placed Mr. Bryant
under arrest?

A Officer Reddy placed both of them under arrest,
the defendant Best and the defendant Bryant.

THE COURT: Is there anything further?

Very well, Sergeant, you may return to your duty.
You are excused. You may leave the courthouse.

Call your next witness.

MR. VIZCARRONDO: William Sinnigen.

OFFICER JOHN REDDY

PAGINATION AS IN ORIGINAL COPY

1 pgsr

Reddy - direct

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2 J O H N R E D D Y , called as a witness in behalf
3 of the Government, being first duly sworn, testified
4 as follows:

5 THE COURT: Officer Reddy, your name has been
6 mentioned in the course of this trial so far, and I take it
7 you may be on the stand more than just for a short period
8 of time. What I am about to say, I say to all witnesses.

9 There is nothing more troublesome than a witness
10 saying something that he was not asked to say, and it presents
11 problems even to the point where the Judge has to declare
12 a mistrial and start all over again. I have to caution you
13 even though you have testified many times in the course of
14 your career as a policeman. I have to caution you to answer
15 the question put to you. That is very vital. If the
16 question doesn't ask for something you know, don't volunteer
17 it. That's not your job. You are a witness now. If they
18 do not ask for information that you know exists, that is
19 their responsibility and not yours.

20 The big test for you is to ask yourself always:
21 Is this an answer to that particular question? That's all
22 that I am supposed to do. The Judge said to answer that
23 particular question and nothing else.

24 Wherever you can say yes or no, say just that,
25 and if you don't remember say that you don't remember.

1 2 pgsr

Reddy - direct

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2 I don't want any guesswork.

3 If you are asked what was said, tell us, as best
4 as you can remember, what each person said. Don't omit
5 anything. Don't forget anything. Try to give the full
6 answer as you best recall while you are under oath.

7 THE WITNESS: Yes, your Honor.

8 DIRECT EXAMINATION

9 BY MR. VIZCARRONDO:

10 Q By whom are you employed?

11 A New York City Police Department.

12 Q How long have you been employed the New York City
13 Police Department?

14 A Twelve years.

15 Q What job have you held with the New York City
16 Police Department?

17 A I was on foot patrol, scotter patrol, for approxi-
18 matetely two years; I was on radio motor patrol for around
19 six years, and three years in anti-crime.

20 Q What precinct are you assigned to?

21 A Thirteenth Precinct, Manhattan.

22 Q I direct your attention to April 24, 1975,
23 approximately 1:30 in the afternoon. Where were you at that
24 time?

25 A I was on patrol in a yellow taxi cab, Police

1 2 page

Reddy - direct

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2 Department, No. 17053, civilian clothes.

3 Q Where was the taxi cab?

4 A At West 20th Street and Fifth Avenue in the
5 intersection waiting for a red light, proceeding east.

6 Q What street was it?

7 A West 20th Street.

8 Q Was anyone else in the car with you?

9 A Police Officer Galluba was driving the taxi cab
10 and Sergeant Henry was in the rear seat with myself.

11 Q How were you dressed?

12 A Civilian clothes.

13 Q Officer, what, if anything, did you observe at
14 that time?

15 A At that time I observed two males crossing Fifth
16 Avenue from east to west and stop in front of the bank on
17 the northwest corner of 20th Street and Fifth Avenue, the
18 Chemical Bank, stand around for a couple of seconds, look
19 around, look in the bank, and just were loitering in front
20 of the bank.

21 Q What, if anything, did you do then?

22 A When the light changed the cab proceeded across
23 the intersection, at which time I got out of the cab.

24 Q What happened to the cab at that point, as far
25 as you know?

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Reddy - direct

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A The cab proceeded east. I was out of the cab at 20th Street and Fifth Avenue.

Q What, if anything, did you observe next?

A I observed the two males outside the bank peering through the window, walking around to the West 20th Street side of the bank and coming back to the entrance, and I observed one male enter the bank through the front entrance while the other stood outside.

Q Do you see the man that entered the bank in the courtroom today?

A Yes.

Q Point him out, please.

A That is the gentleman with the red suit [indicating].

MR. VIZCARRONDO: May the record reflect the witness has identified the defendant Bryant.

THE COURT: So ordered.

Q Do you see the other man in the courtroom today?

A Yes.

Q Point him out.

A He is the gentleman sitting with the pin-striped suit and white tie.

MR. VIZCARRONDO: May the record reflect the witness has identified the defendant Best.

THE COURT: So ordered.

2 Q What, if anything, did you observe after you saw
3 Bryant enter the Chemical Bank?

4 A I observed Best outside in the street looking up
5 and down, looking into the bank observing Best.

6 Q What, if anything, did you do next?

7 A I crossed the street from east to west, crossed
8 Fifth Avenue, and entered the bank through the front door.

9 Q What did you observe inside the bank?

10 A I observed one defendant on a teller's line,
11 feeder line, trying to shove up to the window, in line.

12 Q Did you observe anything else?

13 A I observed the other defendant Best outside,
14 still walking outside, and I observed him walking south on
15 Fifth Avenue.

16 THE COURT: May I interrupt you.

17 Be good enough to develop the point in regard to
18 the position on the feeder line, where he was on that line.
19 Were there people in back or in front of him?

20 Q Officer, as best as you can recall, approximately
21 how many people were on the line that you saw the defendant
22 Bryant standing on?

23 A At the time I entered the bank I would say there
24 were approximately eight to nine people on line.

25 Q Approximately how many were in front and how many

1
2 in back?

3 A Approximately eight were in front of him and he
4 was the next one on line, and then, as I entered the bank,
5 two other people got in front of me and I was three behind
6 Bryant on the tellers' line.

7 Q Did you observe Bryant doing anything on the
8 teller's line while you were inside the bank?

9 A No. I just observed --

10 THE COURT: "No" is the answer. That's all.

11 Q You stated that you observed the defendant Best
12 walking east on 20th Street. Where were you when you ob-
13 served this?

14 MR. CONCANNON: Excuse me. I believe he said he
15 saw Mr. Best walking south on Fifth Avenue.

16 THE COURT: What do you say to that?

17 MR. VIZCARRONDO: I believe Mr. Concannon is
18 correct.

19 THE COURT: That's the way to do it.

20 Thank you.

21 Q I believe you testified that you observed the
22 defendant Best walking south on Fifth Avenue. Where were
23 you when you observed this?

24 A In the bank.

25 Q And how did you observe that?

2 A Through the window.

3 Q What, if anything else, did you observe?

4 A I observed Mr. Bryant on a teller's line.

5 Q What did you do next?

6 A I left the bank.

7 Q Did you see anything when you left the bank?

8 A Mr. Best.

9 Q What did you see?

10 A I saw Mr. Best stand on the southwest corner of
11 West 20th Street and Fifth Avenue, and then cross Fifth
12 Avenue and proceed east on East 20th Street.

13 Q Did you see anything else?

14 A I observed Mr. Best walk, I would say, two-thirds
15 of the street down the block, down East 20th Street, between
16 Fifth Avenue and Broadway, and stop at a car and have a
17 conversation with a third male in the car.

18 Q What, if anything, did you see next?

19 A Next I observed Mr. Bryant come out of the bank,
20 stand on the northwest corner of 20th Street and Fifth
21 Avenue.

22 Q What door of the bank did Bryant come out of?

23 A The front door.

24 Q On Fifth Avenue?

25 A Yes.

1
2 Q What did you see next?

3 A Next I saw Mr. Bryant cross the street from west
4 to east on 20th Street across Fifth Avenue and at the same
5 time I observed Mr. Best coming back down East 20th Street
6 proceeding west towards Fifth Avenue where they both met
7 on the northwest corner of Fifth Avenue and East 20th Street.

8 Q What, if anything, did you see next?

9 A I saw both Mr. Best and Mr. Bryant engage in a
10 short conversation and proceed north on Fifth Avenue.

11 Q What did you do?

12 A I followed both of them.

13 Q What did you observe?

14 A I observed Mr. Bryant walking with his coat buttoned
15 up, his hand in his left coat pocket with a very stiff arm,
16 and I thought he was trying to conceal something at the time.

17 MR. HERWITZ: Objection. I move to strike out the
18 operation of the witness' mind.

19 THE COURT: What do you say to that?

20 MR. VIZCARRONDO: May I approach the bench on this?

21 THE COURT: All right.

22 [At the bench:]

23 THE COURT: Please proceed.

24 MR. VIZCARRONDO: Your Honor, I believe that
25 defense counsel is getting into the question of probable

cause for the arrest of Best, and they certainly did it with the last witness and stated it was their intention. Since that's the case I think the witness' testimony as to how he held his hand and how the witness reacted to that --

THE COURT: Which caused him to do some other act?

MR. VIZCARRONDO: That's correct.

THE COURT: What do you say? Do you say anything?

MR. HERWITZ: I made the objection, your Honor.

I, of course, don't claim that he didn't have probable cause to arrest Bryant. I'm not objecting on that ground. I don't intend to cross-examine this witness as to his state of mind.

THE COURT: You are taking a position as to what is before the Court, which is an objection.

MR. MURPHY: I would also agree with that.

THE COURT: Mr. Gipson?

MR. MURPHY: Mr. Gipson has asked me to speak on this point, your Honor.

The point goes, really, to the question as to the arrest of the defendant Best and as to the question of the arrest of the defendant Bryant. I do not believe your Honor did open the trial to that and we are not pressing the point. The only question is as to the arrest of the

defendant Best so operation of mind as to the defendant Bryant is irrelevant and should be stricken.

MR. VIZCARRONDO: I would point out that what the officers observed Bryant doing, how the reaction was, relates to probable cause for arresting Best since they were acting in concert.

THE COURT: Is there anything you wish to say?

MR. CONCANNON: Nothing, your Honor.

THE COURT: I think on the whole the better part of wisdom would be to rule, and I so rule, that we will not go into the reaction in the officer's mind that prompted him to do so.

The objection is sustained.

[In open court:]

THE COURT: Ladies and gentlemen, I ought to say that the last question inquired as to the officer's reaction, to what he beheld. He was telling us that. You remember there was an objection to the question and I have sustained the objection, so there will be no answer to that question and that question should be disregarded.

BY MR. VIZCARRONDO:

Q Officer Reddy, I believe you testified that you saw the defendant Best and the defendant Bryant walking north on Fifth Avenue and that you followed them, and the

2 defendant Bryant had his left hand in his coat pocket. Did
3 you see what type of coat he was wearing?

4 A He was wearing a man's topcoat, three-quarter
5 length.

6 Q Did you see how it was buttoned?

7 A It was buttoned all the way up.

8 Q Would you describe what the weather was like on
9 that day?

10 A Bright sunny day, approximately 60 degrees.

11 Q What, if anything, did you observe after you started
12 following them north on Fifth Avenue? By "them" I mean the
13 defendants Bryant and Best.

14 A I observed Mr. Best and Mr. Bryant proceed north
15 on the east side of Fifth Avenue to 23rd Street where I
16 watched them cross 23rd Street to a safety island and then
17 proceed west across Fifth Avenue and stop in front of 200
18 Fifth Avenue, the Chase Manhattan Bank.

19 Q What did you see then?

20 A I observed Mr. Best and Mr. Bryant engaged in a
21 conversation outside of the bank, peer through the front
22 window of the bank, and then both of them walked west on
23 West 23rd Street and looked at the side entrance of the bank
24 and through the side windows into the bank.

25 Q What, if anything, did you see then?

1
2 A Then I observed them walk back to Fifth Avenue
3 and peer through the front window of the Chase Manhattan
4 and then have another conversation and proceed south on
5 Fifth Avenue on the west side of the street.

6 Q How long were they in front of the Chase Manhattan
7 Bank and on the side?

8 A Five minutes at the bank.

9 Q What did you do when they started walking south
10 on Fifth Avenue?

11 A I ducked into a store, or the hallway of a clothing
12 store, and they walked right past myself and proceeded south.

13 Q What did you do then?

14 A I followed them south at approximately East 20th
15 Street and Fifth Avenue I observed Officer Ricciardi coming
16 over towards me.

17 Q What, if anything, did you see then?

18 A I observed Best and Bryant still proceeding south
19 and Officer Ricciardi and Sergeant Henry came up on the scene.
20 All three of us followed Mr. Best and Mr. Bryant south on
21 Fifth Avenue.

22 Q What did you see then?

23 A At 18th Street and Fifth Avenue, at the Manu-
24 facturers Hanover Bank, Mr. Best and Mr. Bryant had a short
25 conversation outside the bank, looked into the window of the

2 bank, and both men entered the bank.

3 Q Through what door did they enter?

4 THE COURT: Which bank is this?

5 Q Is it the Manufacturers Hanover Trust?

6 A Yes.

7 Q At Fifth Avenue and 18th Street?

8 A Yes.

9 Q Through what door did they enter?

10 A The front revolving door.

11 Q What did you do next?

12 A I looked through a window and a door into the bank
13 to observe what they were doing.

14 Q What did you see?

15 A I observed Mr. Best get on the tellers' line and
16 I observed Mr. Bryant through the revolving door on the
17 south side of the bank in the bank engaging the guard in
18 conversation.

19 Q Do you mean you were looking through the revolving
20 door of the bank?

21 A The revolving door and the window, both.

22 Q In what direction was the defendant Bryant facing?

23 A The defendant Bryant was facing towards the back
24 of the bank. His back was towards me.

25 Q What did you see then?

1 A I saw the defendant Bryant speaking to the guard,
2
3 place his right arm around the guard's shoulder, and with his
4 left hand in his pocket he proceeded with the guard to the
5 rear of the bank.

6 Q What did you see then?

7 A Then I observed Mr. Best on a line and I entered
8 the bank. As I entered the bank, Mr. Bryant looked at me
9 and got off the tellers' line and walked through the side
10 door, the 18th Street exit, and left the bank.

11 Q When you say "walk", was he walking slowly or
12 quickly?

13 A Quickly.

14 Q What did you do next?

15 A I left the bank through the same door I entered,
16 a revolving door, and came out on 20th Street and Fifth
17 Avenue.

18 Q You mean the Fifth Avenue door?

19 A Yes. I came out on Fifth Avenue. Sergeant Henry
20 and Police Officer Ricciardi were there. I informed them
21 that --

22 THE COURT: No, no.

23 Q State what you did and saw.

24 A I saw the defendant Bryant in between the side
25 door of the bank and the corner of the bank coming right

2 towards me walking at a brisk pace along the building line
3 of the bank.

4 Q Before you saw the defendant Bryant, did you see
5 the defendant Best?

6 A Best? I saw the defendant Best coming out past
7 the side door walking towards me, walking on West 20th
8 Street proceeding east along the building line coming right
9 towards me.

10 Q By "east", you mean towards Fifth Avenue?

11 A Yes.

12 Q What, if anything, did you see then?

13 A At that time Sergeant Henry and myself and Officer
14 Ricciardi stopped the defendant Best.

15 Q What did you see next?

16 A Next I saw the defendant Bryant coming out of the
17 side door of the bank.

18 Q What did he do?

19 A He came out of the side door of the bank. Myself
20 and Officer Ricciardi were on West 20th Street to the side
21 entrance of the bank. At this time defendant Bryant was
22 walking towards us where we approached him, identified our-
23 selves as police officers, and placed him on a wall to give
24 him a frisk, placed his hands on a wall.

25 Q What did you do next?

A I frisked the defendant Bryant and as I frisked his outer garments with my left hand, his left side -- I felt a hard object there. I squeezed the object. I identified the object to myself as a hand grenade. I placed my left hand in his left pocket and I removed a hand grenade.

THE COURT: Excuse me.

When you say "left pocket", do you mean of his jacket?

THE WITNESS: His coat; yes, sir.

THE COURT: The jacket under the outer garment?

THE WITNESS: The outer garment jacket, the overcoat.

THE COURT: Was it not the same person concerning whom you referred to prior in your earlier testimony, something about a stiff arm? Didn't you say a stiff arm?

THE WITNESS: Yes.

THE COURT: Who was that?

THE WITNESS: That was the defendant Bryant.

THE COURT: With the long overcoat?

THE WITNESS: Yes.

THE COURT: Show us what you meant when you said you saw his arm was held stiffly. Demonstrate that.

THE WITNESS: The whole time I observed him --

THE COURT: Do what the Judge asked you to do.

2 Show the jury what you meant when you said he had his arm --

3 THE WITNESS: His arm was in his coat like this
4 [indicating]. He walked like this [indicating]. He turned
5 like this [indicating]. Anything he did he always kept the
6 arm like that.

7 THE COURT: Thank you. That's what I wanted.

8 The Higher Court has properly criticized us for
9 not having witnesses show the jury what it is that they
10 mean by their expressions. I am trying to bear that in
11 mind, and I think it is nothing more than common sense that
12 when a witness says something that refers to an action you
13 should demonstrate that action, because people have different
14 concepts of what that word means, so this way there is no
15 doubt about what the witness meant by his testimony.

16 Thank you.

17 Q What did you do after you removed the hand grenade
18 from the defendant's pocket?

19 A I held the defendant Bryant right where I frisked
20 him. Sergeant Henry came up to me and Sergeant Henry handed
21 me the demand note. He told me it was a demand note. He
22 handed me the demand note and I placed the defendant Best
23 and the defendant Bryant under arrest and informed them of
24 their rights.

25 Q By the way, did you observe at that time whether

or not the hand grenade was a live or dummy hand grenade?

A I observed at the time it was a dummy hand grenade.

THE COURT: I, for one, don't know what that means.

Does that mean it was a hand grenade but inoperative or was it an imitation hand grenade?

What is the contention of the Government?

Q Was it an inoperative hand grenade or a fake one?

A It was a practice hand grenade which they use in the Military Service for practice.

THE COURT: That explains it.

Thank you.

MR. GIPSON: Your Honor, with all due respect, I am not certain that I have an answer as to whether or not it was a disengaged hand grenade or a fake one or --

THE COURT: When it comes time for cross-examination you can hammer home all you want to and go after it. You will have to wait your turn.

What is the next question?

Q Officer, did you search the defendant Best after his arrest?

A Yes, I did.

Q Did you find any identification on his person?

A No.

Q Did you search the defendant Bryant after his

arrest?

A Yes.

Q Did you find any identification on his person?

A No.

Q Did you advise the defendant Bryant of his constitutional rights after his arrest?

A Yes.

Q What constitutional right did you advise him of?

A That he has the right to an attorney; he doesn't have to answer any questions without an attorney present; if he cannot afford an attorney, an attorney will be provided for him; he has a right to have an attorney present at all questions with the police, and I also informed him now that I had advised him of his rights was he willing to cooperate.

Q Did you advise him of his right to remain silent?

A Yes.

Q Did he say anything to you after you advised him of his rights?

MR. HERWITZ: Objection, your Honor.

MR. MURPHY: Objection, your Honor.

MR. HERWITZ: May I approach the bench, your Honor. I have a question about that.

THE COURT: No. I have no question about that.

I don't know where we are going at this particular juncture.
I shall not bother myself about it.

The objection is overruled. I will allow the
answer.

MR. MURPHY: I have an objection as well.

THE COURT: You would rather voice it at the side
bar?

MR. MURPHY: If it please the Court.

THE COURT: All right.

[At the side bar:]

THE COURT: If these are important questions of
law I can hear them in the robing room.

MR. HERWITZ: If your Honor please, it happens
that I have a case pending before the United States Court
of Appeals in this District and I am waiting for a decision
on a related question. I am familiar with this situation.

The Supreme Court of the United States last June,
June 19th or 20th, in a case, Hale against the United States,
held that it was reversible error to ask a witness whether
the defendant after being advised of his rights remained
silent. That would be contrary to the Rules of Evidence
which is what it was held in the Hale case. They didn't
reach the Constitution question. They decided not to base it
on that.

But if, for example, he says that the defendants remained silent, that would be contrary to the decision in Miranda, your Honor.

MR. VIZCARRONDO: I will state simply the testimony that I intend to elicit from the witness. I intend to ask him whether in advising the defendant of his rights he asked him what his name was and the response that the defendant gave to that.

THE COURT: Gentlemen, I have given you time. Please listen to what is said. Go ahead and confer and I will wait.

MR. VIZCARRONDO: In response to that question Bryant stated his name was Raymond Irving, and that's all I intend to ask him.

MR. MURPHY: We have made motions for statements made by the defendant under Rule 16. No statements have been turned over to us whatsoever by the Government. No statements appear in the 3500 material. No statements whatsoever by anybody from the Government were turned over to myself as defense counsel that I know in the record of statements by the defendant, my defendant Bryant. Under those circumstances I would object strenuously to trying to put in any statement whatsoever by the defendant Bryant.

MR. VIZCARRONDO: I gave the defendant Bryant

all written and recorded statements.

In addition, I gave to the defendant Bryant as 3500 material the police arrest record of the defendant Bryant which listed his name as Raymond Irving.

[In open court:]

THE COURT: I think we better take a recess because this is quite involved and you people have sat for an hour this afternoon. Ladies and gentlemen, we will take a short recess by that time I hope to have resolved this question.

Officer, you may step down and come back when we are ready for you. Do not talk about your testimony with anybody. Don't talk to other witnesses about this testimony.

[Jury excused.]

THE COURT: Let us define clearly and unmistakably and without any ambiguity what it is that we are going to try to resolve.

As I understand it, the Government has elicited from the instant witness that he gave the defendant Bryant his Miranda warnings, and then the Government sought to elicit what the defendant Bryant said after the Miranda warnings was given by Officer Reddy. Is that what this is about, Mr. Vizcarrondo?

MR. VIZCARRONDO: Yes. All we intend to elicit is the name that the defendant Bryant gave when the officer asked him what his name was.

THE COURT: Will you please, counsel for Bryant, either one, tell me whether you object, and, if so, what is the basis of your objection.

MR. MURPHY: We do object, your Honor. First of all, there are two prongs for the objection.

In the first instance, the Assistant United States Attorney was asked for Miranda warnings and we sat here poised as to what would be the response from the witness, as did the jurors. Under these circumstances the witness can answer that the man refused to give any further information. Of course that's a constitutional right when given those warnings not to speak any further. To have come in as a response that the man said nothing further, that, the defendant Bryant would contend, is a reversible error, grounds for a mis-trial, because what it does, it puts before the jury an inference of guilt from silence and sufficient circumstances when it is his constitutional right to remain silent. That is Number One.

Double damning is the way the prosecutor proposes to assert it.

He says when asked his name after given his rights,

1
2 according to the prosecution, the name given was a false
3 one. Secondly, there is nothing further after the giving of
4 the name.

5 Now we have not only somebody asserting his con-
6 stitutional rights to remain silent -- which we have agreed
7 is an error, reversible error -- but a false statement as
8 well put on top of that, a double damning shot on the
9 prosecutor in this case against the defendant Bryant.

10 We would object to that.

11 In fact, exactly on that theory, there is still
12 a second ground which I have made before your Honor. That
13 statement, the alleged statement, is not in the 3500 material
14 turned over to us. No notice was given to us whatsoever
15 of the statement.

16 I regret to say to your Honor that this argument
17 was made sort of full blown from the head of Zeus rather
18 than on papers or with some sort of deliberation. We were
19 surprised on this. No statement was made, was given to
20 defense counsel before, and suddenly, at the trial, this
21 comes across. It is surprise.

22 On those grounds, your Honor, we would object to it,
23 and if any further statement of it is made we move for a
24 mis-trial in this case because it is extraordinarily damning
25 to our defense.

That is our contention, your Honor.

MR. HERWITZ: Although I don't represent Bryant, since Best is accused of conspiring with Bryant I have an interest in having Bryant cleared as well, and, therefore, I take it upon myself to address myself to this question.

As an officer of the court I would like to communicate my knowledge of some recent cases on this subject which I think would help.

First of all, we start with Miranda, and in the course of the Miranda decision by Chief Justice Warren he said, of course, silence at the time of arrest is not admissible, and to bring that out would be violative. In this case having first given the defendant warnings, and if the only thing that they then elicit from the defendant is a phony name, it is not only the damage of the phony name but that he gave some other explanation of his presence, for laymen on the jury not familiar with the Fifth Amendment and Miranda writings would be difficult for them to understand why if he were there innocently he didn't say more than just his name and, indeed, a phony name.

There are cases that I mentioned to your Honor and I think they are even stronger on this point. I mentioned the Hale case, your Honor, which was decided by the Supreme Court of the United States on or about June

1 26 pgsr

2 21st of this year.

3 In the Hale case, your HONOR, there was a con-
4 viction in the Washington, D. C. Circuit and the defendant
5 took the stand in that case and gave an explanation, an
6 exculpatory explanation of his conduct, and then the Govern-
7 ment, over objection, was permitted to adduce the fact that
8 at the time of his arrest he had not given this explanation.
9 It was reversed in the Circuit Court in Washington mostly
10 on constitutional grounds and the Supreme Court took
11 certiorari. They then upheld the decision of the Circuit
12 Court but not on constitutional grounds. They held it under
13 their supervisor powers of deciding what is proper evidence
14 in a Federal Court, and they held that bringing out silence
15 even on cross-examination, even when the defendant takes
16 the stand, is not permissible. They distinguished this
17 case from other cases. I don't want to go into detail.

18 In this Circuit I have a similar appeal from the
19 State Court, Judge Werker upheld me, my case, that the
20 evidence was overwhelming nevertheless. It is sub judice
21 in the Court of Appeals.

22 I honestly believe having really researched all
23 of these cases that you would be flirting with serious error.
24 You may be upheld if you allow it in, but I think it is
25 highly questionable.

1
2 THE COURT: Your position is, as I understand it,
3 that the Government could only go so far as to have the
4 jury apprised of the fact that the Miranda warnings were
5 given to the defendant Bryant but can go no further.

6 MR. HERWITZ: That's already in so nothing else
7 can be done about it. I say it can't go any further.

8 THE COURT: I will call on Mr. Concannon.

9 MR. CONCANNON: My position is the same, your
10 Honor. The defendants are all charged here with a conspi-
11 racy. Speaking for the defendant Stanley Simpson we do
12 not want it in.

13 In addition, your Honor, I have something else.

14 THE COURT: I don't want to cut you off. Bring
15 it up at the right time. I can only take one thing at a
16 time. Let me resolve this and then go ahead with whatever
17 is here. Is that all right?

18 Now we will hear from the Government.

19 MR. VIZCARRONDO: I would like to mention the
20 points in the order that Mr. Murphy enumerated them.

21 First of all, the only thing that the Government
22 intends to elicit from this witness is this:

23 After you informed the defendant Bryant of his
24 Miranda warning, warned him of his constitutional rights,
25 did you ask him what his name was? What did he say?

That's all.

To say that that is a violation of a defendant's constitutional right or Miranda, I think, is absurd. That position would mean that whenever a defendant answers some questions after being advised of his rights and refuses to answer other questions the Government can't bring before the jury the answer he gave to the questions. That's all we intend to do. We don't intend to bring before the jury whether or not the police officer asked the defendant Bryant any other questions and what the response, if any, to those questions was.

THE COURT: Were there any other questions put by Reddy under those circumstances? He only asked him that one question?

MR. VIZCARRONDO: As far as I can recall, that is true. He may have asked a few more questions. I don't recall. That's all I intend to elicit.

THE COURT: If I allow you to ask that question it will be with the understanding that that is all he was asked and therefore the defendant answered that which he was questioned about. I will say that to the jury right then, that the defendant had a perfect right to remain mute, and if he chose he had a right not to give his name.

All that was asked of him was his name and he

answered it?

MR. VIZCARRONDO: That's correct.

THE COURT: That's all easy and that's all they have a right to consider. That's all that is before us and nothing more.

I get your position. Now I will hear from Mr. Herwitz.

MR. HERWITZ: I may be confused between 3500 material and the witness' testimony. In 3500 material the statement put to the witness was: Are you willing to cooperate?

Did he testify to that? I think he did. Didn't the witness testify that he said to them, "Are you willing to cooperate?"

THE COURT: Mr. Court Reporter, let's resolve that by going through the testimony. It is toward the close of Reddy's testimony given so far. Please examine it and read it to us.

[Record read.]

THE COURT: The Court Reporter has read back the question and the last question is objectionable. It is entirely too general and unwarranted, and I say that it may not be asked. That is a far cry from what we now have before us, and that is: Did you ask the defendant Bryant his name?

I hope I make that distinction clear. In fact, if I may say so, the objection voiced so vigorously by counsel supports the position they take when we read the actual question that was put to the witness, which I have just now addressed myself to and upheld counsel's objection. I am upholding that objection only as to form. We still have before us the substance of the pursuit by the Government, and that is whether the Government has the right to bring out that Reddy asked the defendant Bryant what his name was.

Is there anything further to be said?

MR. MURPHY: I believe so, your Honor. There are two things.

One of them is that, again, the defendant Bryant presses the point as to the Rule 16-type question of the defendant's statement, the surprise element on this, strenuously.

THE COURT: What else do you want to say?

MR. MURPHY: Secondly, your Honor --

THE COURT: You are right. We will deal with it right now as soon as you are through.

MR. MURPHY: Secondly, your Honor, although certainly strategy is for the Government and not for the defendants, a statement was made after he was arraigned or before he was arraigned here in this courthouse 24 hours

1 later, or whatever. In that statement they also have this
2 other name mentioned. They want to introduce that one.
3 They have given us notice about that statement. It is in
4 3500 material. We don't have particular trouble but there
5 is some problem of timing. It is one thing to have given
6 your name in a statement before an Assistant United States
7 Attorney in this courthouse, but it is quite another thing
8 at the scene of the crime to be bringing out that one state-
9 ment just so it was an inference, the Government could argue,
10 that in this troublesome situation this person did nothing
11 but give a false name. That's the nub of our argument,
12 and although it does go to prosecutorial strategy in this
13 case, when they are presenting it here, flying in the face
14 of the cases brought forward by Mr. Herwitz to your Honor's
15 attention, we argue most strenuously that the Judge in his
16 discretion should not permit it in, and if it was permitted
17 in, although we would not stand up and make a circus of it
18 by asking for a motion for a mis-trial, we would move for
19 a mis-trial at that time; but I don't want to make a fuss
20 about it in front of the jury. This is for us outside
21 of the hearing of the jury. That would be our motion, your
22 Honor.
23

24 THE COURT: You are putting the Judge on notice?

25 MR. MURPHY: Yes.

THE COURT: What do you say about the failure to turn over material dealing with this particular statement?

MR. VIZCARRONDO: Your Honor, the Government turned over to the defendants all written or recorded statements of each defendant as required by Rule 16. The Government fully complied with Rule 16.

In addition for the defendants to state they are surprised or prejudiced by this testimony is disingenuous as the 3500 material is replete with numerous examples of the fact that the defendant Bryant gave his name as Raymond Irving after he was arrested.

I will just state that I do not think that the defense counsel will dispute that, that in a number of the 3500 material that was given to all the defendants the defendant Bryant's name was stated as Raymond Irving. To say they were surprised is disingenuous.

THE COURT: Mr. Viscarrondo, I put it to you to your sense of appreciation and your sense of fair play. You will not "yes" the Judge if you think as an officer of the Court you are duty-bound to take an opposite position to the Judge. You must state it. I know you would.

Here we have the nobility of the protective device afforded every defendant by the Miranda rulings. We are told, and told properly, to remember that a lay jury may

hold adversely to a defendant, against the defendant, his failure to respond or his insistence on remaining silent, with the jury thinking amongst themselves, "Well, if he was innocent why didn't he speak up?" We are not very far from that position. We are not far from that with regard to what we have here.

You are about to ask: "What did you next say, Reddy?"

"I said to the defendant Bryant, 'What is your name?' and he gave me the answer, which is a name other than his true name."

In the vernacular the expression is: So what? Doesn't every human being who is apprehensive as to what may follow resort to giving a name other than his own? Isn't it human not to reveal one's name for fear that consequences, possibly irremedial, might follow? Is that to be construed as an evasion consistent with at least a nibble at guilt? I think not.

If we are to be aware of the jury's reasoning, which is common to humanity, we must avoid the possibility that the jury will construe the answer concededly for the sake of argument as to the name, that it might cause the jury to draw inferences adverse to the person who so answered.

Many a person, innocent as the driven snow, has,

2 in my experience, been apprehensive of the horror, true or
3 not, but nevertheless anticipatory, that followed in the
4 wake of what, at that moment, might seem like a holocaust
5 about to descend, resorts to the giving of a name other
6 than his true name for protection, for family protection,
7 or for other reasons, and so where you have an answer that
8 is as reconcilable with an innocent utterance as with some-
9 thing that might be hard to reconcile on the part of an
10 innocent person, I think we must sacrifice the latter con-
11 sequence and pay homage to the former.

12 I put it to you very plainly. I am not over-
13 whelmed by the importance of this small result. To re-
14 capitulate, it is capable of two interpretations, one likely
15 to be of some damage and the other harmless.

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35pgsr

Reddy - direct

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MR. VIZCARRONDO: I first point out that I submitted a supplementary request to charge this morning in which I requested that the Court instruct the jury that if they found beyond a reasonable doubt that the defendant Bryant used a name other than his own in order to avoid subsequent identification, that would be a fact from which they may, but need not, infer consciousness of guilt on his part, and I cited authority for the request.

I understand your Honor's point, but I think that it is an argument for defense counsel to make.

THE COURT: I don't care who makes it. I want to know what is consistent with the highest order and concept of justice. You may bring out enough evidence at another junction that would support the request to charge you just alluded to. All I want to know is whether at this point where you have just developed Miranda warnings you should be allowed to go forward with this particular question. Do I make myself clear?

I am not saying in connection with some other phase of the case you may not be allowed to bring out the point you are trying to develop now. I am just saying that right now, in the light of the circumstances as developed at this juncture, I wonder whether or not we should pursue it.

1 Have you any answer to that or don't you see a
2 distinction?
3

4 MR. VIZCARRONDO: I believe I understand your
5 Honor's point, but I believe I must stick to my position.
6 I don't believe bringing this evidence at this point in
7 any way violates any of the defendant's constitutional rights.
8 I think that the inferences that may be drawn from his state-
9 ment, one way or the other, are arguments for the Government
10 and the defendant to make.

11 THE COURT: Very well.

12 The Court rules that it will reserve decision on
13 the objection; that counsel at this time are forbidden from
14 pursuing this particular point which is under the Court's
15 consideration. If the Court should rule in favor of the
16 defense, then there is no harm done with regard to calling
17 back the witness; if the Court, on the other hand, should
18 rule in support of the Government, we will call back Officer
19 Reddy and develop it.

20 Is that fair enough?

21 MR. VIZCARRONDO: Thank you, your Honor.

22 THE COURT: Is that fair enough to counsel?

23 MR. MURPHY: Very fair.

24 THE COURT: I want to give it further thought,
25 but I must say to you, in all fairness that my reaction,

1 as I think it ought to be, is quite strong on that point,
2 and that is to sustain the objection at this point because
3 of the significance of Miranda. Here you have the witness
4 standing there, a defendant, told of his rights. All the
5 acts that preceded the statement with regard to Miranda,
6 the steps, the banks, this and that, and he knew full well
7 whether there was innocence or guilt. He knew that there
8 was something up. The law says, "Don't speak if you don't
9 want to speak. You have a right to have a lawyer. Before
10 you open up your mouth you can get a lawyer."

11 We say that that is a civilized development of
12 justice. I have seen in my own short period of time over-
13 whelming concepts coming into existence that we have cried
14 aloud for. You don't know what a terrible thing it was in
15 the early days of my practice when you put a witness on the
16 stand and were stuck with him. He could sell you down the
17 river and you could not do a blessed thing about it. You
18 vouched for his veracity when you put him on the stand and
19 you could not tackle him.

20 Look how that has been overwhelmed. You can put
21 a witness on the stand and if he lies you can go after him
22 and show that he is a liar, even though you did put him on
23 the stand.

24 So I have witnessed these glorious concepts coming
25

1 into existence. They are beautiful. None of us wants to
2 mar them, not even the Government.
3

4 The Government's concept of justice is that justice
5 is done when a fair trial has been had. The Government has
6 a right to say that this is within the law and the opposition
7 has a perfect right to say that it is not within the law.
8 There is no trickery or device here, and none of you con-
9 tend that there is. You will please me immensely if you
10 would avoid terms like maneuvers and all that sort of thing.
11 I see no evidence of maneuvers by anybody.

12 You have a right to exercise maneuvers, but when
13 a man gets up and says, "I believe this," and says it with
14 earnestness, you know he is not trying to hand you something.
15 He fights for it; he is entitled to respect. But when the
16 opposite side does the same thing, doesn't the opposite
17 side get entitled to a little respect? Of course.

18 If the Judge is not sure he should reserve decision,
19 which is exactly what I am doing.

20 MR. VIZCARRONDO: May I be heard on this once
21 more briefly?

22 Your Honor appears to being disturbed between the
23 juxtaposition of the giving of the Miranda warning and the
24 question as to what his name is.

25 I point out, if that is what bothers your Honor,

2 the Government will always have this problem, if and when
3 we would be able to bring out this information from another
4 witness touching on a later period because we would always
5 want to bring out the fact that the defendant was aware of
6 his Miranda warning before he made the statement for good
7 reason, unless the defendant Bryant would concede that he
8 was aware of them. I don't think he is about to do that.

9 THE COURT: The spontaneity of the declaration
10 and the occasion which gives rise to such spontaneity are
11 of great weight. The fact that a person is given a Miranda
12 warning and is asked a question right there and then on
13 top of it is an entirely different situation than that
14 presented by giving the same answer on another occasion
15 with a substantial period of time between the Miranda
16 warning and the subsequent utterance. What exists at that
17 moment is what counts.

18 I say that any defendant, any human being, advised
19 of his rights, we are all dutybound to see that that is
20 enforced and meticulously given. Do you know what this
21 means? Make it clear. I want to be sure you understand.
22 The law says you have to bring that home. When you just
23 get through doing all of that, what kind of human being
24 would it be to be indifferent to it? He has to be en-
25 lightened to it.

1 He is told, "Protect yourself." That's what he
2
3 is told. "The law wants you to protect yourself." Then,
4 on top of it, to smash in with a question, press an entirely
5 different context --

6 I reserve decision on that.

7 MR. VIZCARRONDO: There is one other thing,
8 your Honor.

9 Mr. Murphy stated that the defendant Bryant would
10 object if the Government brought out the same information
11 in reference to the pre-arraignment interview that the
12 defendant Bryant had before an Assistant United States
13 Attorney. The statement as to what the defendant's name
14 was in that interview directly followed the giving of the
15 Miranda warning. The problem is the same there.

16 THE COURT: First of all, I am dealing with a
17 different situation. I don't know what time elapsed between
18 the episodes. You might as well inform me while we are
19 at it.

20 MR. VIZCARRONDO: The defendant was interviewed
21 by an Assistant United States Attorney the day after his
22 arrest. He was given his Miranda warnings and immediately
23 asked, "What is your name?" It is the same situation here,
24 I believe.

25 THE COURT: Then I don't understand you.

When did he make the statement to the United States Attorney?

MR. VIZCARRONDO: The day after his arrest, but immediately following the giving of the Miranda warnings by the Assistant.

THE COURT: The Assistant gave them again?

MR. VIZCARRONDO: Yes.

THE COURT: And there he had been given his Miranda warnings by Mr. Reddy?

MR. VIZCARRONDO: Yes.

THE COURT: How long before did Reddy give him the same thing?

MR. VIZCARRONDO: The day before, your Honor.

THE COURT: There may be other things you may bring out to bolster something. You can bring that out. Right now I can only deal with what was before me. Mr. Herwitz has the right to say, "I object." I am only ruling on what we do about this. The question is whether or not you should be allowed to have Reddy tell us what the defendant's response was when Reddy, immediately after giving Bryant his Miranda warnings, asked as to what his name was. That's all I have here.

I am inclined to uphold my initial reaction to it. However, I want to give it further thought.

1 Is there anything else at this time?

2 Mr. Concannon, you were about to say something?

3 MR. CONCANNON: Yes, your Honor. I am wondering
4 whether that cannot be done possible --

5 THE COURT: If you can see how we hold up some
6 of these things --

7 MR. CONCANNON: I would like to call to your
8 Honor's attention, in open court, without the presence of
9 the jury sometime later today --

10 MR. MURPHY: For the Court's convenience, we
11 are going to have a scheduling problem tomorrow morning.

12 THE COURT: I am looking to you people to show me
13 how well you have accomplished my plea to you to cut down
14 the amount of time of your absence.

15 Mr. Vizcarrondo, do you have an appeal to argue?
16 I learned that there is an appeal on one of my own cases.

17 Actually, seriously, how much time do you think
18 you will need?

19 MR. VIZCARRONDO: I am first on the calendar at
20 10:30. I should be finished by 11:30.

21 THE COURT: Why can't we have the jury come in
22 tomorrow morning at 9:30 and sit for one hour? Then you
23 can go and argue and we will have a recess. We will continue
24 when you return.
25

MR. VIZCARRONDO: Fine.

MR. CONCANNON: I have an appeal but I will be going up at the same time.

THE COURT: That applies to you. You are not due until what time?

MR. CONCANNON: Of course the amount of time it will be taken is questionable, but --

THE COURT: Didn't you make an effort to find out whether you were going to be called right away?

MR. CONCANNON: I asked people in my Appeals Bureau to check for me. They do the appeals for us.

THE COURT: Apprise the Court -- and you do the same thing, Mr. Vizcarrondo --

MR. CONCANNON: It should not take too much time beyond that of Mr. Vizcarrondo.

THE COURT: I will excuse you from 10:30 to 11:30. I hope you will be able to carry on and get it over with. I don't want to interfere with your activity in another court.

Gentlemen, is that the only thing? Are there any other lawyer who has an engagement tomorrow of any kind?

All right. Take a few minutes.

[Recess.]

[Jury in box.]

THE COURT: Ladies and gentlemen, the trial of a case presents no end of problems, especially when here you have diligent counsel who pursue everything to the umph degree -- as is their duty and obligation. They present problems, and that's what makes the law interesting. There are new angles, new features, new phases that must be considered in the light of the particular facts of a given case. There must be differences and there are differences, and counsel are here to point out the differences. When I say "counsel", I mean counsel on both sides. All we do is encourage them to express themselves and tell the Judge what it is that bothers them, listen to matters as they are thoroughly thrashed out.

We worry. We are deeply concerned.

By the way, before I forget, on the last question, be good enough to submit your authorities to my Law Clerk by six o'clock tonight. If we have to look into the law tonight we shall. That's what we are here for, but I would like to have the advantage of your authorities. Just let me have whatever you have. Call the office and it will be taken down. I am not even asking you to submit them but just give me a digest. I am only asking you for citations. We will go on from there.

So with your understanding that this is not an

1 easy task for any of us, please bear with us. We want to
2 give this case the fairness that it deserves but it takes
3 time.
4

5 We will sit until 5:15 tonight. I will let you
6 go. I have other work in other cases upstairs. Tomorrow
7 morning you must be here at 9:30. Why? Because the
8 attorneys have other matters that are due before, in this
9 instance, the Higher Court. That has been set weeks ago.
10 What should I do? Should I tell the Higher Court to wait
11 until I get through with this trial? The Higher Court
12 wants them up there. The Higher Court wants them tomorrow
13 at a certain time, 10:30. We hope they will be back with
14 us by 11:30.

15 That's the way life is. The Court has to function,
16 and there are conflicts, and all that sort of thing. So
17 at least let's get an hour of testimony in before the
18 lawyers disappear. They have a labor in another court.
19 They will be expected to give their heart and soul to that
20 particular case. I have no doubt that they will. That is
21 the reason we are setting this down for 9:30 tomorrow morning.
22 At 10:30 we will have a recess until they return, and then
23 we will go on with the case. That's the best I can do.

24 Thank you for understanding.

25 MR. VIZCARRONDO: May I continue, your Honor?

THE COURT: Please.

Ladies and gentlemen, I hope you will understand that these little comments by me are the result of years of experience that have brought home to me the necessity of making the jury a part of the proceedings, not as an on-looker, but as a participant in the doing of justice. If a Judge remains mute they think all kinds of things, and it is human. That is why I frankly tell you what the score is. That is why I take so much of my time to explain things to the jury.

You may continue.

DIRECT EXAMINATION [continued]

BY MR. VIZCARRONDO:

Q Officer Reddy, you testified that Sergeant Henry handed you a note after he stopped the defendant Best?

A Yes.

Q What did you do with that note?

A I vouchered the note and turned it over to the FBI, Special Agent Carbone.

Q On what date did you do this?

A April 24, 1975.

Q Where did you do this?

A At the Thirteenth Precinct Station House.

Q What did you do with the hand grenade that you

removed from the defendant Bryant?

A I also vouchered that and turned that over to Special Agent Carbone.

Q On what date?

A Carbone and another agent were there. I don't know his name.

Q On what day?

A April 24, 1975.

Q Where was this?

A At the Thirteenth Precinct Station House.

MR. VIZCARRONDO: I have no further questions.

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Reddy - cross

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CROSS-EXAMINATION

3

BY MR. HERWITZ:

4

Q Officer Reddy, my name is Victor Herwitz and I am the attorney for the defendant Best.

6

I think you have testified that you observed the defendant Best at the Manufacturers Hanover Trust Company on the day in question; is that right?

9

A Yes.

10

Q At about what time was that?

11

A At the Manufacturers?

12

Q Yes.

13

A Approximately five minutes to two.

14

Q Where were you when you observed him for the first time at that time?

16

A Would you sort of --

17

Q When you observed him he was going into the Manufacturers Hanover Trust Company on the day in question. Where were you?

20

A Outside the bank about 20 feet behind him.

21

Q Were you with anybody?

22

A Yes.

23

Q With whom were you?

24

A Sergeant Henry and Police Officer Ricciardi.

25

Q What were their first names?

A William Henry and Anthony Ricciardi.

Q When you say you were with them, were you marching in order or were you spread apart, or what was your relative position to the other?

A A couple of feet from each of them.

Q Did all three of you go up to the bank together or to the bank entrance?

A Yes.

Q When you got to the entrance of the bank, did you separate? What happened? What did you do?

A I looked through the door, the revolving door.

Q Were your colleagues with you when that happened?

A Yes.

Q When you looked through the revolving door -- I take it it is a glass door?

A Yes.

Q Did you see the defendant Best in the bank at that time?

A Yes.

Q Where did you see him?

A On the teller's line.

Q What did you see him do?

A Standing on the teller's line.

Q Do you know what position he was on the line?

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A No.

Q You don't know how many people were in front of him?

A Quite a few.

Q When you say "Quite a few," could you give any estimate? Five? Ten? Fifteen? What is your best estimate of how many people were on the line when you first observed him?

A Ten, twelve.

Q Did you observe the defendant Bryant ?

A Yes.

THE COURT: At that particular time.

Q At that particular time?

A Yes.

Q What did you then do? Did you go into the bank?

A I observed him.

Q Did you ever go into the bank?

A Yes.

Q How long after you observed them in the bank did you enter the bank?

A Minutes, two minutes.

Q During the minute or two minutes were you observing Best and Bryant in the Bank continually?

A Yes.

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2 Q At any time in that minute or two minutes you were
3 observing them, did you see the defendant Best do anything
4 else but be on the teller's line?

5 A No.

6 Q What did you observe the defendant Bryant do
7 during the minute or two before you entered the bank?

8 A Engage the guard, the bank guard, in a conversa-
9 tion.

10 Q You could not hear what was said, could you?

11 A No.

12 Q Did you enter the bank by yourself or with either
13 of your comrades, your colleagues?

14 A By myself.

15 Q Without telling us what the conversation was, if
16 there was one, did you have a conversation or say anything
17 to either of your colleagues before you went into the bank?

18 THE COURT: Yes or no.

19 A Yes.

20 Q After you had an exchange you went into the bank;
21 is that right?

22 A Yes.

23 Q After you went into the bank, what did you do?
24 Did you stand at the door or did you go to a particular part
25 of the bank?

A I walked in the revolving door.

Q When we talk of the revolving door we are talking,

are we not, about the entrance on Fifth Avenue? Is that

correct?

A That's correct.

Q After you went through the revolving door, did

you move from there?

A No.

Q You stayed there?

A Yes.

Q Is that right?

A Yes.

Q Did you observe what Best was doing after you

entered the bank?

A Yes.

Q Where was he when you entered the bank? Was he

still on the teller's line?

A Yes.

Q How many people, if you remember, were ahead of

him?

A I don't remember how many.

Q A few people?

A I don't remember.

Q Did you ever see him go up to the teller?

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A No.

Q After you entered what did you observe Best do?

A When I entered the bank?

Q Yes.

A I observed Best on the teller's line looking directly at me.

Q What did you observe him then do?

A Leave the line very fast.

Q Then what did you observe him do?

A Exit the side door.

Q How were you dressed at that time?

A Civilian clothes.

Q You didn't have any badge on you, did you?

A No.

Q None was showing?

A No.

Q What did you observe Bryant doing?

A I didn't see him.

Q When you saw Best leave at the Eighteenth Street exit what did you do?

A I left from the front door of the bank, Fifth Avenue.

Q When Best went through the Eighteenth Street exit, through the door, could you still observe him from

where you were in the bank?

A Yes.

Q After he went out?

A Yes.

Q Is that a glass partition?

A Glass window all the way.

Q So you saw him on the outside, on Eighteenth

Street?

A Yes.

Q When you left the bank where was Best?

A When I left the bank?

Q Yes.

A Proceeding east along the building line of the bank coming towards Fifth Avenue.

Q Coming towards Fifth Avenue?

A Yes. He left from the side entrance and was coming towards Fifth Avenue.

Q You then came out of the Fifth Avenue entrance; is that correct?

A Yes.

Q Where were your colleagues when you came out of the Fifth Avenue entrance?

A Right on the corner of 20th Street -- on the corner of Eighteenth Street and Fifth Avenue.

Q Did you join them?

A Yes.

Q Did you have a conversation with them? I am now asking you what it was.

A Yes.

Q At that point could you observe where Bryant was or was not?

A I could observe where he was.

Q Where was he?

A Coming right at us.

Q Bryant was coming right at you?

A Yes. Walking.

Q Did you see him come out of the bank?

A Yes.

Q Which door did you see him come out of?

A The side door. The 18th Street door.

Q Did he come out of the door before or after Best?

A You are talking about Bryant now?

Q Yes .

A After.

Q So you first saw Best come out of the door?

A Yes.

Q I think you said Best was out of the door before you even left the bank?

pgsr

Reddy - cross

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A Right.

Q What did you see Best do after he came out of the door?

A Walk towards Fifth Avenue.

Q And after that you saw Bryant come out of the 18th Street door; is that right?

A Yes.

Q About how many feet separated Best from Bryant on 18th Street when Bryant first came out of the 18th Street

door?

A How many feet?

THE COURT: Approximately.

THE WITNESS: I don't understand. Best and Bryant did not come out of the bank the same time. I am trying to determine --

THE COURT: He wants to know what your estimate is of the distance between Best, who came out of the 18th Street door, and Bryant when Bryant came out of the same door. How far, in other words, was Best from Bryant at the moment Bryant was exiting the 18th Street entrance?

THE WITNESS: 50 to 60 feet.

Q Was Best standing still when you observed him?

A Yes.

Q How far was Best standing from the corner when you

2 observed him?

3 A 50 to 60 feet.

4 Q Best was 50 to 60 feet?

5 A Yes.

6 Q After Bryant came out of the 18th Street exit
7 you said Best and he were separated by 50 feet; is that what
8 you testified to?

9 A Yes.

10 Q Was Best standing still then or was he walking?

11 A He was standing still. We had him.

12 Q You had already stopped him; is that what you mean?

13 A Yes.

14 Q In other words, before Bryant came out of the 18th
15 Street exit of the bank, Best had been stopped?

16 A Yes.

17 Q Who stopped him?

18 A Sergeant Henry and Police Officer Ricciardi and
19 myself.

20 Q Did you surround him?

21 A Yes.

22 Q Was somebody in front, somebody in back, and some-
23 body in the side? Is that how it worked?

24 A There was nobody in back. There was one guy on
25 each side and somebody in the front.

Q Somebody in front and someone on both sides?

A Yes.

Q Who was in front of Best when he was stopped?

A I don't remember exactly.

Q Was he told to stop?

A Yes.

Q Was he told, "We are police. Stop"?

A Yes.

Q Was he told, "Don't move"?

A Yes.

Q Was he told that before he was asked any questions?

A Yes.

Q Who told him that?

A Myself, and I think Sergeant Henry at the same time. I'm not sure.

Q Did he obey your order?

A Yes.

Q Did you immediately identify yourself as a police officer?

A Yes.

Q Did you have your badge out and say to him, "Police. Stop. Don't move"?

A Yes.

Q Is that what happened?

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Reddy - cross

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A Yes.

Q Did you tell him he was under arrest at that point?

A No.

Q Did you search him at that point immediately after
you told him to stop?

A Started to frisk him.

Q You started to frisk him?

A Yes.

Q By that you mean somebody patted him down?

A Yes.

Q Did you all do that or did you do it?

A No.

Q Who did it?

A Sergeant Henry.

Q While Sergeant Henry was frisking him, you and
your other colleagues were standing close by him; is that
right?

A Yes.

Q After Sergeant Henry frisked him, do you know
whether he found anything on him as a result of the frisk?

A Right there?

Q Yes.

A No.

Q Did you say something --

THE COURT: Do you recognize that the "no" applies to something other than what you think?

I will ask the Reporter to read the question.

[Record read.]

THE COURT: This shows the Judge was here, at least. That "no" could apply to two different things.

Q Did you observe anything taken from Best immediately after the frisk at the time of the frisk by Sergeant Henry?

A No.

Q Was anything said at that point to Best by you or Sergeant Henry?

A Yes.

Q What?

A "What are you doing in a bank?"

Q Was that the first thing that was said to him?

A Yes.

Q Did you give him any warning before you asked him that question?

A What do you mean by warning? I don't know what you mean by that.

Q Did you warn him of his constitutional rights?

A No.

Q Did he answer the question when you asked him what he was doing in the bank?

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A No.

Q Did you let him go?

A No.

Q Did you tell him he was under arrest?

A No.

Q Did you move from where you were on the side of
him?

A Yes.

Q What did you do? Where did you go?

A Went and got Bryant coming out of the side door.

Q By yourself?

A With Officer Ricciardi.

Q And Henry remained with Best?

A Yes.

Q Did Henry have his hands on Best?

A Yes.

Q Where did he have them?

A He had his hand on his arm.

Q Did you consider that Best was under arrest at
that time?

A No.

MR. VIZCARRONDO: Objection.

THE COURT: It is a little late.

The objection is sustained.

Strike the answer. The jury will disregard it. That calls for the operation of the witness' mind, which is of no importance to us.

Q Was Best free to leave at that time?

MR. VIZCARRONDO: Objection, your Honor.

THE COURT: Objection sustained.

Q Before you left the side of Best, did you have a conversation in his presence with Sergeant Henry?

A Yes.

Q You said something to him and he said something to you?

A Yes.

Q What did he say?

A I said something to him.

Q After you said that you went over to where Bryant was?

A Yes.

Q Did you stop him?

A Yes.

Q Did you place him under arrest at that time?

A No.

Q Did you tell him he was under arrest?

A No.

Q What did you tell him?

1 A "Police officer. Don't move."

2 Q What did you then do?

3 A Identified myself with my shield and my I.D. card.

4 Q Before you frisked him?

5 A Yes.

6 Q Did you then frisk him?

7 A Yes.

8 Q How far away were you, Bryant, and your other
9 colleague, at that point from where Best was standing with
10 Sergeant Henry?
11

12 A 50 to 60 feet.

13 Q Let me go back. You said when you and your col-
14 leagues went up to Best, "Police. Don't move." Is that
15 right?

16 A Yes.

17 Q Do you know whether Best was ever told after that
18 in your presence, "Okay, you can go"?

19 A No.

20 Q When you frisked Bryant you testified that you
21 found what you described as a hand grenade; is that right?

22 A Yes.

23 Q What did you do with it?

24 A Removed it from his coat pocket.

25 Q Did you then place him under arrest?

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Reddy - cross

211

A Yes.

Q Did you tell him he was under arrest?

A Yes.

Q Then what did you do?

A Called for a car and took him to the station house.

Q Did you then go back to Best?

A No.

Q Did you then speak to Sergeant Henry?

A Yes.

Q Where was Sergeant Henry at this point?

A He walked Best down to us.

Q Was this after you found the hand grenade? Did
you call him down to you?

A No. He just walked down.

Q He just walked down?

A That's right.

Q Were you facing Best and Henry when you searched
Bryant?

A No.

Q You had your back to them; is that right?

A Not my back. My side.

Q Your side?

A Yes.

Q You were having Bryant under observation?

1
2 A Yes.

3 Q Did you then put Best under arrest?

4 A Yes.

5 Q When was that?

6 A After I had the hand grenade and the note.

7 Q Is that the first time you said to Best, "You are
8 under arrest"?

9 A Yes.

10 Q Correct me if I am wrong. When a sergeant and a
11 patrolman or detective are on the job, the detective or the
12 patrolman rather than the sergeant does what they call in
13 police "take the arrest"?

14 A Yes.

15 Q In other words, you say that you were the official
16 arresting officer as far as Best and Bryant is concerned.

17 A Yes.

18 Q What was the name of your other colleague?

19 A Ricciardi.

20 Q Was he also an arresting officer?

21 A No.

22 Q It would be contrary to police practice for a
23 sergeant to be the arresting officer as such when there
24 are detectives or patrolmen on the same job; is that right?

25 A I don't know what you mean by that at all.

MR. HERWITZ: I have no further questions.

2 MR. CONCANNON: Your Honor, I may or may not have
3 any questions. May I have a moment to speak with government
4 counsel?

5 THE COURT: Of course.

6 (Pause)

7 CROSS-EXAMINATION

8 BY MR. CONCANNON:

9 Q Patrolman Reddy, when you first frisked Mr. Bryant
10 and you felt that hard object, did you know immediately what
11 it was?

12 A Yes.

13 Q How could you tell?

14 A Feel.

15 Q What did you feel that distinguished this from a
16 rock, let us say?

17 A The ridges, the grooves, the handle, the pin.

18 Q You had touched a hand grenade before, I take it?

19 A Yes.

20 Q This was not a hand grenade though, was it?

21 A It was to me.

22 Q It is a practice hand grenade.

23 A It is still a hand grenade.

24 Q I take it it is used for training purposes?

25 A I don't know. I don't know what it is used for.

Q This particular grenade which you say you got from the defendant Bryant is a grenade which is normally used for training purposes as a dummy grenade?

A I guess so, yes.

Q It is a grenade that does not normally take the kind of charge which is capable of exploding its container; is that not correct?

A I guess it could be. I don't know.

Q If you don't know, that's the answer.

A I'm not an expert on the grenade.

Q It is a practice grenade which is used merely for purposes of getting, let us say, servicemen accustomed to the feel of a somewhat minor explosion somewhat near them?

MR. HERWITZ: I don't like to object to counselor's question but I do object to it. It is assumes a state of facts not in evidence.

MR. CONCANNON: What I am concerned with is that this thing is no more than a firecracker at its very best, and that's what I am trying to draw out through the witness. That's an offer of proof.

THE COURT: It will be for the jury to decide whether this particular instrumentality would produce fear. Whether it was a model, whether it was plastic, whatever it was, you have a right to bring that out, and I presume that's

1 what you are endeavoring to do, but the issue will be for
2 the jury to determine whether or not possessing that shows
3 intent or motive, and so forth and so forth. I don't quite
4 get your belittlement of it or anybody else's enlargement
5 of it. Ask the witness plainly: Describe it to us.
6

7 He seems to have enough familiarity. Under oath
8 he has just told us that all he did was just feel it, and
9 that was enough to put him on notice without seeing it that
10 it was a hand grenade.

11 Isn't that what you said?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: He subsequently saw it when he took
14 it away from him; is that correct?

15 THE WITNESS: Yes.

16 THE COURT: Tell him to describe what he held in
17 his hand after he took it out of Bryant's pocket.

18 BY MR. CONCANNON:

19 Q What you seized was, in fact, a container of some-
20 what half the dimensions of a normal hand grenade, was it
21 not?

22 A I don't know.

23 MR. CONCANNON: I have no further questions.

24 THE COURT: I will ask it.

25 Tell us in your own way what this looked like,

2 this grenade.

3 THE WITNESS: It was black. It had ridges on it
4 like a hand grenade. It had a pin like a hand grenade. It
5 was heavy like a hand grenade, and when I took it out of
6 his pocket I swore it was a hand grenade.

B12 7 THE COURT: You have had familiarity in the course
8 of your police work with hand grenades?

9 THE WITNESS: In the army too, Judge.

10 THE COURT: For comparative purposes, be good
11 enough to tell us whether or not this particular instrument
12 you took from the defendant Bryant was comparable to what
13 you say was. --

14 MR. CONCANNON: May I object, most respectfully.

15 THE COURT: You have a right to, but let me finish
16 my question.

17 MR. CONCANNON: Thank you, your Honor.

18 THE COURT: -- comparable to what you used or
19 saw in army use as a genuine hand grenade?

20 MR. CONCANNON: I object.

21 Mr. Vizcarrondo indicated that he intends to intro-
22 duce this in evidence through another witness. He probably
23 would be the best person to describe it. What I am trying
24 to elicit through this witness he would be incapable of
25 answering.

1 THE COURT: I would like to have the jury confronted
2 with what he is now asked to say, even though it might be
3 introduced in evidence later on. Right now we are dealing
4 with a present situation. You started it and tried to bring
5 out that it was of small consequence, that it was a firecracker,
6 and that sort of thing. It may well have been. I want the
7 jury to know what it was. That's all.

8
9 Was it comparable to a hand grenade you had been
10 accustomed to seeing the course of your army experience?

11 THE WITNESS: Yes.

12 THE COURT: Very well. Thank you.

13 Continue with the cross-examination.

14 (Pause)

15 THE COURT: Before you start, Mr. Gipson, I am
16 told that Officer Reddy has a training school to attend.

17 What is that, if I may ask? I don't want you to
18 step off unless it is imperative.

19 THE WITNESS: It is the first day of school, your
20 Honor. It is the Institute of Technology. We have to be
21 there at 5:15. It is regular college, 5:15 to 10:15.

22 THE COURT: Over months?

23 THE WITNESS: Yes.

24 THE COURT: Where is this?

25 THE WITNESS: The Telephone Building, 53rd Street

2 Tenth Avenue.

3 THE COURT: I don't want him to 'a late for school.
4 This is an enlargement of his own education.

5 Very well. Will you be able to make it if I let
6 you go now?

7 THE WITNESS: Yes.

8 THE COURT: Mr. Gipson, without restricting you,
9 will you give the Judge an idea how long cross-examination
10 may take?

11 MR. GIPSON: It could be lengthy.

12 I would like to have a side bar conference before
13 I start my cross-examination.

14 THE COURT: I can't win them all.

15 Go ahead. Just remember, Officer, that you are
16 due back here promptly at 9:30.

17 It would be a hardship if you didn't attend this
18 first meeting?

19 THE WITNESS: It is an accelerated course, only
20 eight weeks.

21 THE COURT: Go ahead.

22 Unless we need to detain the jury, I will let them
23 go. I want you to give me all the motions, I want to sit
24 here and dispose of everything so that we don't have any
25 more interruptions and we will be able to take testimony

ORAL RENEWAL OF MOTION TO SUPPRESS

PAGINATION AS IN ORIGINAL COPY

1 pgds

2 United States of America,

3 -vs-

75 Cr. 436

4 Stanley Simpson, et al.

5

New York, New York

6

September 5, 1975--9:40 a.m.

B34

7

(In the robing room.)

8

MR. HERWITZ: The reason I asked for this

9

conference, your Honor, is that the government is about to

10

call the FBI agent whose principal purpose for being called

11

would be to testify as to the alleged admissions made to

12

him by my client and also put in the note and the hand grenade.

13

As I indicated earlier, your Honor, I intended,

14

provided your Honor permits it, to ask your Honor to re-

15

consider your initial denial of the motion to suppress which

16

was made by my predecessor, in the light of the testimony

17

as presented here. I want to, at this time, request your

18

Honor to reconsider that. I ask to be heard on it in connec-

19

tion with it, and I also have to do what your Honor knows

20

I have to do, confess that I have made a serious error in

21

the conduct of this trial which I would like to kick under

22

the rug, but my client is paramount and I must confess it.

23

The reason I am moving to suppress the evidence

24

is as follows, your Honor:

25

I contend that Best was falsely arrested by

2 Sergeant Henry; that it was an unlawful arrest. I contend
3 that as a result of that unlawful arrest the fruit of that
4 unlawful arrest was Best trying to get rid of the note in
5 his pocket -- the damning affect is obvious -- and that the
6 further fruit of it was the statement that he subsequently
7 allegedly made.

8 The issue, as I see it, is whether or not the
9 arrest of Best was unlawful.

10 I believe that even though this is a federal court,
11 since the arrest was made by New York City police officers
12 in the performance of their duties as New York City police
13 officers or New York State officers, the law of arrest, inso-
14 far as it is constitutionally proper, of New York would be
15 applicable.

16 Henry testified, and the others testified, that
17 when Best came out of the bank --

18 THE COURT: May I interrupt you

19 Mr. Clerk, it is now a quarter of 00. We have
20 been waiting for the jury to meet. We have been waiting for
21 this one and that one. Tell the jury that the Court is
22 engaged in listening to legal argument, and as soon as the
23 argument is finished they will be called into the box.

24 I always like to have the jury told what is going
25 on.

2 MR. HERWITZ: Henry claims, in effect, that he
3 didn't arrest Best initially. He stopped and frisked him.
4 I readily concede, your Honor, that under the Terry case, and
5 the other cases, decided by the Supreme Court, it was a
6 classic case for stop and frisk. There were suspicious
7 circumstances, that's right. They were entitled to stop
8 them. They were entitled to pat him. Having done so, your
9 Honor, and not finding anything on the pat-down which en-
10 dangered their life, and not being entitled to search him,
11 it is my contention that, therefore, they should have released
12 Best, and not having released him, even though they didn't
13 say, "You are under arrest," that is a seizure and an arrest
14 in point of law. That's stopping him. He was interfered
15 with from doing what he wanted.

16 Why do I say there was no probable cause to arrest
17 him? The fact of the matter is that while his actions and
18 the actions of the others were, of course, suspicious --
19 no question about it -- there was, respectfully, no probable
20 cause to arrest him, and I do not think that you can gather
21 from the testimony of Sergeant Henry that he thought that when
22 he first stopped Best there was probable cause to arrest him.
23 He stopped him, frisked him. He is a knowledgeable cop.

24 The mistake I made -- and it is a serious mistake,
25 your Honor -- is when I examined Henry I said to him, "Did

2 you have your gun out?"

3 The reason for that was, what was the nature of
4 the stop? Was it, in effect, an arrest?

5 This is one of the reasons that I asked the
6 reporter for the minutes of my cross-examination. Permit me
7 to read:

8 "Q Did you have your gun out?

9 "A No, I didn't. It was not in sight."

10 Now, it is a very important issue whether he had
11 his gun out or not. I asked it because I thought I had seen,
12 in the material, that he did. When I was examining him I
13 had the interrogation conducted by the FBI man and I kept
14 looking: Where is the gun out? I could not see it, and I
15 thought maybe I had been mistaken, and I didn't discover until
16 going through all the material that where it appeared to me
17 he did have his gun out was in 3522, part of the 3500 material
18 supplied us by the government which purports to be a document
19 made in the regular course of business of the Police Depart-
20 ment which recites -- this is from William Henry, Sergeant
21 William Henry, to the commanding officer, 13th Precinct,
22 subject, request for departmental recognition. In this
23 statement, your Honor, Henry gives a description of the events,
24 including a description of the arrest and the circumstances
25 of the arrest, and he says, if I may:

2 "As the perpetrator Best continued to look around
3 in the bank while on the teller's line, he apparently ob-
4 served the officers taking their positions outside the bank.
5 He suddenly bolted from the line and began to run out the
6 side door exit. The officers, with guns drawn, seeing this,
7 ran to the side door where they apprehended him. While
8 Sergeant Henry was frisking the perpetrator, Officer Ricciardi
9 then observed that the other perpetrator, Bryant, was coming
10 out of the other side door of the bank. He and Officer Reddy
11 were in immediate pursuit, and after a short chase appre-
12 hended him. As Officer Reddy was frisking Bryant he stated
13 he felt a hard object in Bryant's left coat pocket which felt
14 like a hand grenade," etcetera.

15 In other words, in his testimony here I asked him
16 specifically: Did you have your gun out? The answer was no.

17 In his statement, which apparently is his state-
18 ment -- the information had to be supplied by them -- "with
19 guns drawn."

20 I would like to have that put in the record, either
21 by introducing this document or recalling, be permitted to
22 recall, Henry for that purpose in connection with my motion,
23 my request to your Honor to reconsider the motion to suppress.

24 I would think that in light of this -- and I called
25 it to the United States Attorney's attention yesterday -- he

2 was not of this opinion, otherwise he would have corrected
3 it when the testimony came in. I don't know whether he
4 wants to correct it.

5 That's the situation, your Honor.

6 THE COURT: All of this is in support of your
7 application to suppress?

8 MR. HERWITZ: Yes. On the ground that it was
9 not a stop and frisk. That was an unlawful arrest; that there
10 was no probable cause for the arrest; and that the note and
11 this statement are fruits of that unlawful arrest.

12 THE COURT: What would the government like to say?

13 MR. VIZCARRONDO: First, the government would
14 oppose putting that document into evidence, of course.
15 Officer Henry is available. If Mr. Herwitz wishes to recall
16 him on the defendant's Best case the government would have
17 no objection to that.

18 Secondly, it is our position that when Henry
19 stopped Best it was a stop and it was a frisk. He did not
B35 20 put him under arrest until a short time afterwards. The testi-
21 mony is that Henry arrested Best and asked him to accompany
22 him to where Bryant was standing, and when Best consented
23 and started walking in that direction, Best removed the piece
24 of paper from his pocket, dropped it, and Henry saw it in
25 plain view and picked it up.

2 But, in addition to that, your Honor, he then,
3 assuming arguendo Mr. Herwitz' position that Best was under ,
4 arrest when he was stopped, there was more than ample probable
5 cause to arrest him. The officers had been observing Best
6 and Bryant for twenty minutes to half an hour. They saw
7 them case two banks. They saw them enter the third bank.
8 They saw Bryant walk with the guard to the back of the bank
9 and Bryant had his arm around the guard, near his gun, and
10 was taking him out of sight. They saw Best standing on the
11 teller's line. Then they saw Best suddenly leave the bank.
12 Any reasonable man would have thought that these men either
13 were involved in conspiracy to rob the bank, either actual
14 bank robbery, or, at the very least, an attempted bank robbery.
15 Therefore the officers had more than ample probable cause
16 to arrest Best.

17 I would impress upon your Honor, as I am sure
18 your Honor knows, the standard to judge the probable cause
19 for an arrest is a subjective one, not an objective one.
20 Here there were objective grounds to arrest the defendants,
21 as we know, because one actually did have the demand note
22 on him, and the other did have this false hand grenade on him,
23 and they did actually enter the bank, the government submits,
24 with intent to rob it. There was a conspiracy to rob the
25 bank.

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2 But aside from that, subjectively, what the
3 officers observed, what the officers reasonably believed,
4 and what any reasonable man would have believed from what
5 the officers observed, gave them more than ample probable
6 cause to arrest Best.

7 I would refer your Honor to the case of Peters vs
8 New York, which is a Supreme Court case in 392 United States
9 where there are facts very similar in effect to this ones
10 here in which the Supreme Court said, Chief Justice Warren,
11 the majority said, the police had probable cause to arrest
12 the defendants because it appeared to them that an attempted
13 burglary had occurred.

14 THE COURT: Are you finished?

15 MR. VIZCARRONDO: Yes, sir.

16 THE COURT: Do other counsel wish to contribute
17 to this particular motion, the application now before the
18 Court?

19 MR. CO'CANNON: I do, your Honor.

20 It has probably been very unclear for the record,
21 and I primarily am bringing this up now for that reason:
22 I had not objected to the admission of the various items in
23 evidence on new grounds, but underlying the whole case and
24 what I should have probably made clear at the beginning of
25 the case was that I don't believe there was probable cause

to arrest Stanley Simpson, and in support of that, your Honor--

THE COURT: I have one application right now, sir.

I ask for contributions towards that application. Don't

divert my attention from what I have to rule on. Have you

anything to say? I don't know whether I have to turn to

you. This relates solely to the situation affecting

Mr. Herwitz' client. He says there was no probable cause.

It is my policy always to look to members of the bar who are

officers of the court and who are interested in due administra-

tion of justice, and I turn to them as a matter of courtesy.

Is there anything you would like to say in connection with

the application pending before me?

Sometimes you may have something to contribute.

I see nothing wrong in asking.

I don't mind mentioning right on the record that

I can conceive of no more idealistic example of what I am

trying to say to you than what is found in the life of Sir

Edward Marshall Hall wherein it reveals that in arguing be-

fore one of the high English courts it was not at all un-

exceptional for the Lord Chief Justice to say, "Sir Edward,

your adversary has been delayed because of a temporary in-

disposition. We ask you to take his place and present his

arguments." And the emphasis was clear that he was duty bound

not only to exceed his own ardor for his own points, it was

1
2 expected that he would almost turn himself inside out to
3 advance what his adversary had raised in his briefs.

4 So that kind of thing appeals to me, always has,
5 and I look to my brothers at the bar. What do we do with
6 this? How does it sound to you? Would you like to point
7 something out to me that I ought to consider? It is in that
8 light that I have been doing it all along in this case.
9 Maybe you didn't see it, but here it is.

10 I ask you again: Have any counsel have anything
11 to say? Is there any counsel who would like to add anything
12 with respect to the application pending before me right this
13 moment? If you have, speak up. If not, by your silence I
14 will interpret that you have nothing to contribute.

15 MR. MURPHY: Your Honor, just for a moment:
16 Mr. Herwitz has been kind enough to explain this theory to
17 me before, outside, and when he explained it to me the pivotal
18 point in the argument which convinced me of its correctness
19 was that there were two things involved here, a stop and frisk
20 of Best which turned up nothing. There was a lapse of time
21 where Best was restrained. One witness said, "We had him."
22 When the sergeant was asked, "Could he leave at that time?"
23 the sergeant said, "No."

24 In that lapse of time Best discarded a document.
25 Then, using that document, plus the hand grenade, he was

arrested.

The argument is that in that last time a piece of evidence was uncovered by the government which would not have been uncovered but for him being unlawfully restrained. Therefore that piece of evidence is unlawfully seized and should be suppressed.

THE COURT: Is there anyone else who wishes to say anything?

MR. VIZCARRONDO: Your Honor, briefly, in response to Mr. Murphy, I would point out that his argument does not change the fact, even assuming the correctness of Mr. Hurwitz' premise that there was ample probable cause to arrest Best at that time for attempted bank robbery and certainly to restrain him until the officers determined that there actually had been no attempted bank robbery.

THE COURT: Before I make a ruling, I want to inquire about the point that Mr. Herwitz properly emphasized in his argument this morning. He asked forgiveness for an oversight. We are all guilty of doing that under enormous pressures of labor. The only way to do it is to do it exactly the way he did it and to say, "I committed an oversight and I want to correct it right now. I'm sorry, but here it is. I must bring it to light." That is a proper approach.

So, regardless of the outcome of the pending

2 application before me, I have got to see that that phase of
3 Mr. Herwitz' disturbance is resolved. In other words, did
4 Henry have the gun out or did he not? I gather that this
5 is a different juncture. The guns were out when the men were
6 coming out of the bank. Was the inquiry that Mr. Herwitz
7 was concerned with, was that at the same moment, same time,
8 or was it later that Henry may very well not have had his
9 gun out?

10 Do you get what I am trying to say?

11 MR. VIZCARRONDO: Yes, your Honor.

B36 12 THE COURT: What is your recollection of the
13 evidence?

14 MR. VIZCARRONDO: My recollection of Sergeant
15 Henry's testimony under cross-examination -- I read it last
16 night -- was that Mr. Herwitz asked him, "When you frisked
17 the defendant, was your gun out?" He said no.

18 Now when Mr. Herwitz pointed out the statement in
19 that document to me last night --

20 THE COURT: 3522?

21 MR. VIZCARRONDO: Yes, your Honor. Correct.

22 I did not question Sergeant Henry about it, of
23 course. I don't know whether that document is accurate or
24 not or whether there was a different sequence during which
25 the gun was pulled out. I would not object to Mr. Herwitz

2 putting Sergeant Henry on the stand to try to determine what
3 happened.

4 THE COURT: My own reaction and my own memory of
5 the testimony is that this all happened on a different
6 occasion, even though it may have been a matter of seconds.
7 At one time the gun was out and at another time the gun was
8 not out.

9 You pat-down a man, you put your gun away. When
10 he comes out of the bank, you pull it out if there is occasion
11 to think that you better do so. That's a different situation.
12 Thus we have not it so clearly pinpointed and I am not con-
13 vinced that there has been an inconsistency here. However,
14 I join. If Mr. Herwitz wants to call Henry to clear it up,
15 very well, it is all right with me, and I certainly would
16 give permission.

17 On the merits of it there was probable cause as a
18 matter of law. The application is denied.

19 Are there any other applications?

20 MR. CONCANNON: I have one, your Honor.

21 Although I did not object to the admissibility
22 of various items of evidence, I want to make it clear, for
23 the record, that I have never conceded there was probable
24 cause to arrest Mr. Simpson. I don't think there was. In
25 fact, it seems to me if Patrolman Galluba's testimony is to

1 be believed -- and I think substantially it is -- he kept
2 Mr. Simpson under observation for something approaching an
3 hour, and throughout the course of that hour Mr. Simpson did
4 nothing wrong and, in fact, I don't think his conduct can
5 even been characterized as suspicious. At the end of that
6 period of time he was arrested and both the gun in the car
7 and the subsequent advice of rights and his failure to sign
8 that form, statements made and so forth, I contend that those
9 are all fruits of an illegal arrest, an improper arrest,
10 and one which was not based on probable cause; consequently,
11 I would like the record to reflect that although in those
12 instances where I did not have more particular objections to
13 the admissibility of evidence, I also intended to make clear,
14 although I did not, that I did not concede there was probable
15 cause for this arrest.
16

17 THE COURT: I don't think you need be disturbed
18 about any delay in making the application. I think that's
19 an application that can always be made. You don't forfeit
20 that. You can do it even after the jury has deliberated and
21 brought in a verdict. Don't worry on that score.

22 The question is this: Is there merit to what you
23 just said?

24 What does the government wish to say?

25 MR. VIZCARRONDO: Your Honor, Mr. Concannon leaves

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2 out two crucial facts.

3 First, the police officers' observations of
4 Simpson before the car drove away from where it was parked
5 on 20th Street between Fifth Avenue and Broadway, including
6 the observations of his conversation with Best.

7 Secondly, the fact that before Simpson was arrested
8 Sergeant Henry came to the location where Galluba and Schwartz
9 were observing Simpson's parked car and told them of the
10 arrest of Best and Bryant with the note and the hand grenade.

11 What Henry told them has not been placed on the
12 record because of the hearsay rule. However, if Mr. Concannon
13 wants to dispute this, just to make the record clear I would
14 ask that Henry be put on the stand out of the presence of
15 the jury so he can testify to what he told Galluba and
16 Schwartz when he came to them for the arrest of Simpson.

17 THE COURT: Is there anything else?

18 MR. CONCANNON: Your Honor, it seems to me that
19 the government would have your Honor rule that there is
20 probable cause to make this arrest based on events subsequent
21 to the actual arrest, what they were able to determine later.
22 There seems to be something sinister now about Mr. Bryant
23 talking to Mr. Simpson at the car. He gives that as some
24 support for Mr. Simpson being followed and later arrested.
25 There is nothing sinister about that at all. In fact, that

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2 can be a very frequent occurrence, as your Honor knows.

3 In addition, I think it is pretty clear, or it
4 should be pretty clear, that because other people happened
5 to be arrested in the neighborhood that supplies nothing by
6 way of probable cause to believe that Mr. Simpson committed
7 a crime and he should have been arrested.

8 MR. VIZCARRONDO: One more thing. Mr. Concannon
9 has mischaracterized the evidence. I think it was done,
10 perhaps, unintentionally. They did not receive this informa-
11 tion after Simpson's arrest. I think the evidence is clear
12 that Henry went to Galluba and Schwartz and told them this
13 information before they arrested Simpson, told them this in-
14 formation about the arrest of the man whom they had seen
15 consorting with Simpson.

16 THE COURT: Very well.

17 Is there any other attorney who wishes to say
18 anything on the pending application?

19 MR. HERWITZ: Just this, your Honor: In order to
20 make my record I would appreciate your Honor ruling --

21 THE COURT: I said with regard to the pending
22 application. Do you want to come back to yours?

23 Right now, is there anything in connection --

24 MR. HERWITZ: Nothing, your Honor.

25 THE COURT: Does anybody want to say anything?

MR. HERWITZ: No, your Honor.

THE COURT: Application denied. As a matter of law I am compelled to, and do, deny the application.

What do you want to say?

MR. HERWITZ: In order to complete the record, I do not think the jury has to be present but could I call Henry to ask him to straighten out the record relative to the gun situation, whenever your Honor wants it to be done?

THE COURT: That's all right. Of course you may.

Would the government be good enough to see that Henry is available?

MR. VIZCARRONDO: He is right here.

THE COURT: During intermission go ahead and talk to him in the presence of the government and decide whether you want to call him.

MR. HERWITZ: I want to call him. I do want to call him.

THE COURT: So what is the --

MR. HERWITZ: In order to make my record, your Honor, on the probable cause thing and on the arrest. I merely want to put him on the stand, not in front of the jury, but --

THE COURT: Certainly. Certainly. That ought to be done before the end of the government's case.

2 MR. HERWITZ: I understand your ruling. In any
3 event, they had probable cause. So far as your Honor is
4 concerned it won't make any difference.

5 THE COURT: You may bring something out through
6 Henry that may cause me to see it differently. All I am
7 trying to say is it is a question of time. We will do that
8 before the government has finished.

9 MR. HERWITZ: They are about to rest.

10 THE COURT: What difference does it make if the
11 government is going to rest in five minutes or two hours?
12 I want you to do that before that. You don't have to wait
13 as a part of the defense. You have to do it now.

14 MR. VIZCARRONDO: Your Honor, I suggest that be
15 done now because the only other witness I have is Agent
16 Martinolich who will testify to the confession.

17 THE COURT: Mr. Gipson?

18 MR. GIPSON: In the interests of brevity: You
19 will recall that I requested Officer Reddy to remain on call.
20 I hope he is here.

21 MR. VIZCARRONDO: He is here.

B37

22 THE COURT: Let's have the jury come in.

23 Thank you very much.

24 (Time noted: 10:15 a.m.; in open court; jury in
25 box.)

THE COURT: Good morning, ladies and gentlemen.
We regret holding you up again.

One of the delights of being a judge -- and there are a few -- is to have counsel think and worry and fight, and every time I get together with them they have something new that agitates them, and they insist on getting it out of their craw and pushing and fighting every inch of the way. That's what they are here to do. I can't begin to tell you how that electrifies me, that deep sense of caring, that deep sense of devotion. There is no money here worth talking about. This is the way a true surgeon operates. He doesn't ask how much the fee is going to be before he operates. A person is in pain, he goes in there. That's the kind of spirit that they have shown. I get sharp with the once in a while, of course; I get sharp with myself. This is not a grocery store with merchandise. That is my duty, to see that the record is clear and to hold every one of them, including myself, to strict accountability. I have a deep respect and regard for them, each one of them.

You may proceed.

MR. VIZCARRONDO: Thank you, your Honor.
The government calls Joseph Martinolich.

EXTRACTS FROM TESTIMONY OF
SPECIAL AGENT MARTINOLICH

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Extracts From Testimony Of
Special Agent Martinolich

Martinolich - direct

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BY MR. VIZCARRONDO:

Q Agent Martinolich, after the defendant Best signed the advice of rights form, Government Exhibit 19 in Evidence against the defedant Best, what did you say to him and what did he say to you?

A I told the defendant Best that he was being placed under arrest for conspiracy to commit bank robber, particularly the Manufacturers Hanover Trust Company, 130 Fifth Avenue, that date, 4/24/75.

I advised the defendant Best that I had no authorization to make any promises; I could not offer any type of inducement for him to talk, but I would make any cooperation on his part known to the United States Attorney in due course.

Q What did he say?

A The defendant Best told me that he understood this and that he would like to talk, and he wanted to get everything off his chest. At that point I asked him to tell me his story.

Q What did he say?

A Defendant Best told me that on the morning of April 24, 1975, he was in the area of Newark, New Jersey, and during that morning he decided to rob a bank in New York City.

Defendant Best told me that after deciding to rob this

2 bank he proceeded to the area of Grant's, I think, in down-
3 town Newark. He explained this to me as being a type of
4 Nathan's.

5 He said one in the area of Grant's in downtown Newark
6 he proceed to look for an individual to aid him in this bank
7 robbery. He said after a while he came upon a person he had
8 never known before, a totally unknown individual, and after
9 talking this individual for a short period of time, deciding
10 this individual would be the type of individual who would
11 help him in this robbery, he told the individual that he was
12 going to New York to rob a bank; that all the individual
13 would have to do to aid him in this bank robbery would be
14 to keep the guard busy while the defendant Best went up to
15 teller and presented the teller with a note.

16 Defendant Best told me that he told the individual he
17 planned on getting between \$2000 and \$4000 from this bank
18 robbery and that he would split the money with this individual.

19 Q What did the defendant Best say after that?

20 A He told me this individual told him that he would
21 participate in this bank robbery; that he gave this individual
22 a practice hand grenade to utilize in case the guard, or
23 someone else, became excited or suspicious.

24 Q Agent, during this interview you had with the
25 defendant Best, did you show him Government Exhibit 18?

2 A Yes, I did.

3 THE COURT: The higher court -- and properly so,
4 is very adamant that you first complete the conversation.
5 Don't go to something else. Get the witness to say that
6 that was all that he recalls was said, or whatever he has to
7 add. Let it be done right now.

8 MR. VIZCARRONDO: Very well, your Honor.

9 Q What did he say next?

10 THE COURT: If anything.

11 Q What did the defendant Best say next?

12 A That after he gave this individual this practice
13 hand grenade that he had on his person, they proceeded to
14 New York City and they used the Path, public transportation
15 tubes. They arrived in the area of 34th Street in New York
16 City. At that point he and the second individual proceeded
17 to the area of 20th Street and Fifth Avenue.

18 Q What did he say happened when they reached that
19 area?

20 A After arriving in the area of 20th Street and Fifth
21 Avenue, defendant Best told me that he and this other indi-
22 vidual decided that they should case different banks in order
23 to find the most appropriate bank to rob.

24 He said that he and this second individual entered
25 a bank in the area of 20th Street.

1 I asked the defendant Best if he knew the name of the
2 bank, and he said he did not.

3 He said after they left that bank, deciding that this
4 really was not a very good bank to rob, the second individual
5 went into a second bank alone to look at that bank and see
6 the layout of that bank.

7 After the second individual exited the second bank --
8 and the defendant Best said he did not know the name of that
9 bank, also in the area of 20th Street -- he said he and the
10 second individual proceed north on Fifth Avenue, a couple of
11 three blocks, to a large bank on the corner. He said they
12 looked into this bank through a window. They stood outside
13 and decided, after a short period of time, that this bank was
14 not a good bank to rob.

15 At that point he and the second individual proceeded
16 south on Fifth Avenue arriving at 18th Street. After arriving
17 at 18th Street they went into a bank. I asked the defendant
18 Best the name and he said he didn't remember the name. The
19 second individual proceeded to the area of the uniformed
20 guard. Defendant Best told me he got in line and -- the
21 teller's line -- arrived at a woman teller, was going to give
22 this woman teller the demand note he had in his pocket, but
23 at that point defendant Best told me that he felt something
24 was wrong. I asked him why, what was the reason he felt some-
25

1 thing was wrong, and he told me that he just felt someone
2 was watching him. He didn't feel right about it, and at the
3 last minute, instead of taking the demand note out and pre-
4 senting it to the teller, as he had planned, he took some
5 dollars out and received change from this woman teller.
6

7 At that point he said he left the bank alone, and right
8 after leaving the bank he was arrested by plainclothesmen.

B40 9 Q Agent, did you show the defendant Best Government
10 Exhibit 17?

11 A Yes, I did.

12 THE COURT: I'm sorry. Please forgive me if I
13 may persist. That's what has kept me alive.

14 Have you recited everything that you can recall
15 that was said by you and Best on that occasion? Yes or no?

16 MR. VIZCARRONDO: Your Honor, I believe that the
17 witness will testify about a conversation he had with the
18 defendant, about Government Exhibit 17.

19 THE COURT: Then the answer is no. No harm in
20 that.

21 MR. VIZCARRONDO: No, your Honor.

22 THE COURT: So far as I am concerned, I thought
23 that was it. So there is nothing more. There is no harm.
24 I take it the answer is no to my question?

25 THE WITNESS: Yes, your Honor.

2 BY MR. VIZCARRONDO:

3 Q Agent Martinolich, did you show Government Exhibit
4 17 to the defendant Best?

5 A Yes, sir.

6 Q Did he say anything to you about it?

7 A Yes, he did.

8 Q What did he say?

9 A He told me that this was the note that he had
10 typed before the planning of the bank robbery.

11 I asked the defendant Best where he had typed it, was
12 it his typewriter, to get a little more background, and the
13 defendant Best declined to make any comment about the loca-
14 tion or the circumstances surrounding where he typed it.

15 Q But he admitted typing it?

16 A Yes, he did.

17 THE COURT: The Court objects to that. That's
18 for the jury.

19 Q Agent, did you ask the defendant if he typed
20 Government Exhibit 17?

21 A Yes, sir.

22 Q What did he say?

23 A He said he didn't type this note.

24 Q I show you Government Exhibit 18 in Evidence.

25 Did you show that to the defendant Best?

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Martinolich - direct

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A Yes.

Q Did he say anything about Government Exhibit 18?

A Yes, sir.

Q What did he say?

A He said that this was the practice hand grenade that he had given to the second individual in the area of Grant's on the morning of April 24, 1975.

MR. VIZCARRONDO: I have no further questions of this witness.

THE COURT: Cross-examination.

MR. MURPHY: May we have a limiting instruction as to this material, your Honor?

THE COURT: What does the government say?

MR. VIZCARRONDO: The government would join in the request for limiting instruction to the jury,

THE COURT: When you say "limiting instruction," just what do you maintain that encompasses?

MR. VIZCARRONDO: That the jury should be instructed that Agent Martinolich's testimony as to his interview with the defendant Best should be considered by the jury only against the defendant Best and not against the co-defendants.

THE COURT: Is that what you meant?

MR. MURPHY: Precisely, your Honor.

1 THE COURT: You remember yesterday, ladies and
2 gentlemen, I told you with regard to another exhibit --
3 I think it was No.15 -- the notebook that was found on the
4 person of --
5

6 MR. VIZCARRONDO: The defendant Simpson, your
7 Honor.

8 THE COURT: I told you that that was binding only
9 on Simpson and could not be used even by the faintest shadow
10 against the co-defendants or either one of the co-defendants.
11 Remember, I pointed out the wisdom of that rule of law and,
12 lo and behold, a few moments later we saw the wisdom because
13 we saw that one of those pages in that book, 15, there was
14 a reference to Best. That's in evidence. Why should Best
15 be stuck with an entry of that kind by Simpson? So, you see,
16 it would be terrible if the law allowed an entry made by
17 presumably Simpson to be binding on someone else.

18 Now we come to another occasion when I must give
19 you the same stricture, the same emphasis, the same positive-
20 ness. You swore to uphold the law given to you by the judge.
21 If you don't uphold the law and purposely ignore the law,
22 you commit a crime. You can't conceive of that happening,
23 but that's how important it is. When a judge gives you the
24 law you have to obey it. You swore that you would.

25 So I must say to you that this testimony that has

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2 been revealed by the instant witness as to what the defendant
3 Best said to him is binding only on the defendant Best and
4 cannot be used by the faintest inference even against either
5 of the other two co-defendants. It is as though it didn't
6 exist altogether, that it never happened, insofar as their
7 rights are concerned. By "their rights," I mean the rights
8 of the co-defendants. It is only binding on Best and that
9 is it.

10 If you even for the slightest second transmit any
11 of it over to the co-defendants you offend the law.

12 If I have not made that clear to you now is the
13 time to tell me. Is there any doubt in your mind? Do you
14 want to ask any questions as to what I am saying to you? If
15 there is, ask it now. I want it to be crystal clear.

16 Very well, you may proceed.

17 MR. VIZCARRONDO: No further questions by the
18 government, your Honor.

19 CROSS-EXAMINATION

20 BY MR. GIPSON:

21 Q Agent Martinolich, you have been in this court-
22 room since the beginning of this trial; is that right?

23 A Yes, sir, I have.

24 Q Also, you have worked on this case from its incep-
25 tion; is that right?

15

SERGEANT WILLIAM HENRY
(RECALL ON MOTION TO SUPPRESS)

PAGINATION AS IN ORIGINAL COPY

Sergeant William Henry
Recall On Motion To Suppress

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2 We will have one by stipulation and one by testimony.

3 THE COURT: What is the thirty minutes?

4 MR. MURPHY: It could not take more than thirty
5 minutes, no matter what kind of cross.

6 I predict five minutes for our case. It is possible
7 we might be in a position to sum up in this case.

8 MR. GIPSON: I have no conferred.

9 MR. CONCANNON: I have two things to add in the
10 interest of saving time.

11 THE COURT: Off the record.

12 (Discussion off the record.)

13 (In open court; jury not present.)

14 W I L L A M H E N R Y, recalled as a witness on
15 behalf of the government, having previously been sworn,
16 testified further as follows:

17 THE COURT: Sergeant Henry, you are continuing
18 with your testimony under oath.

19 DIRECT EXAMINATION

20 BY MR. VIZCARRONDO:

21 Q You testified that after Best and Bryant were
22 arrested you went to 19th Street, between Park Avenue South
23 and Irving Place; is that correct?

24 A Yes, I did.

25 Q There you joined Officer Galluba and Detective

2 Schwartz; is that correct?

3 A That's correct.

4 Q They were observing the tan Pontiac that had
5 been observed on 20th Street between Broadway and Fifth
6 Avenue; is that correct?

7 A That's correct.

8 Q At that time when you joined Galluba and Schwartz
9 at 19th Street, did you tell them that you and your fellow
10 officers had arrested Best and Bryant?

11 A Yes, I did.

12 Q Did you tell them that you had found a dummy hand
13 grenade and the demand note on Best and Bryant?

14 A Yes, I did.

15 MR. VIZCARRONDO: No further questions, your Honor.

16 CROSS-EXAMINATION

17 BY MR. HERWITZ:

18 Q Sergeant Henry, at any time when you had Best and
19 Bryant on 18th Street outside the bank did you take your gun
20 out?

21 A Out in public?

22 Q Did you take the gun out?

23 A I had it in my holster in my pocket and not in
24 public view.

25 Q At any time did you every show your gun to Best?

2 A I didn't show it, but I had it in my pocket ready.

3 Q Were you holding it in your pocket in such a way
4 as to indicate that you had your gun there?

5 A No, sir.

6 Q After you frisked Best did you draw your gun?

7 A After I frisked him?

8 Q Yes.

9 A I drew my gun at 20th Street and Broadway and
10 placed it in my right-hand pocket prior to that.

B42 11 Q Did you ever draw the gun out of your pocket?

12 A Not out of my pocket; out of my shoulder holster
13 I did.

14 Q You didn't arrest them at any time with drawn gun,
15 did you?

16 A My gun was drawn out of my holster, yes.

17 Q But it was in your pocket?

18 A Yes. Drawn in my pocket.

19 Q You kept your hand on your gun during the time
20 you were frisking --

21 A Most of the time.

22 Q Did you make an application for departmental
23 recognition?

24 A Did I?

25 Q Or was an application made on your behalf?

2 A Yes, it was. I believe it was.

3 MR. HERWITZ: May we have this marked for identi-
4 fication?

xx

5 (Defendant Best Exhibit C marked for Identifi-
6 cation.)

7 Q Would you look at Defendant's Exhibit C for Identi-
8 fication and tell me whether you have ever seen it or read
9 it.

10 A (Pause)

11 Q Did you prepare that yourself?

12 A No.

13 Q Who prepared it?

14 A I instructed Officer Reddy to prepare it.

15 Q Did you read it afterwards?

16 A I didn't see him prepare it.

17 Q Did you read it after he prepared it?

18 A After he prepared it? I believe to the best of
19 my knowledge the captain's clerical man typed it up and I
20 read it after that.

21 Q Did you read it before it was submitted?

22 A Yes.

23 Q Does it contain, in substance, the occurrence
24 that it purports to describe?

25 A In substance it does, except for one or two minor

2 discrepancies which are not really that important to this
3 report.

4 Q Could you point out any discrepancy in that report?

5 A Yes, I can. It states in here that Sergeant Henry,
6 observing this, while keeping the occupant in the tan Pontiac
7 under observation, called for an additional anticrime unit.
8 Officer Ricciardi and Detective Schwartz responded to Fifth
9 Avenue and 20th Street. It should be 20th Street and Broadway.

10 Q Any other discrepancies?

11 A It says here that Sergeant Henry and Officer Reddy--
12 at this point Sergeant Henry and Officer Reddy arrived at the
13 location and picked up the surveillance of the suspect.
14 Officer Reddy then informed Sergeant Henry that Ricciardi --

15 Here it is. This refers to me. While he and Officer
16 Ricciardi then proceed north on Fifth Avenue -- Officer
17 Ricciardi never proceeded north on Fifth Avenue, to my know-
18 ledge.

19 Q Are there any other discrepancies?

20 A As to the paragraph on Officer Galluba and Detective
21 Schwartz, I was not at the scene so I cannot testify to that.
22 That's only hearsay.

23 Offhand I don't see any major discrepancy.

24 Q Other than the discrepancies you have pointed out,
25 those parts of the report that refer to your own activities

are substantially correct; is that correct?

A Yes.

Q May I have it, please.

A Yes.

Q I want to read you this part on page 2 of Exhibit C for Identification. This reads as follows, and I am starting in the middle of the paragraph:

"As the perpetrator Best continued to look around while on the teller's line he apparently observed the officers taking their positions outside the bank. He suddenly bolted from the line and began to run out the side door exit."

Do you remember that statement?

A I saw that statement in the paragraph. I didn't see him bolt from the line.

Q Then it says that the officers with guns drawn, seeing this, ran out to the side door where they apprehended him.

Is that an accurate statement?

THE COURT: To your knowledge, was that so?

A To the side of the building? Pretty accurate.

Q Is it accurate as far as you are concerned?

A Yes.

THE COURT: Whose guns were drawn?

THE WITNESS: My gun was drawn in my pocket. The

2 other officers, I didn't see their guns in sight. I think
3 they had them in their pockets.

4 THE COURT: I don't want a thought.

5 THE WITNESS: I didn't see their guns, your Honor.

6 Q When you say that your gun was drawn in your
7 pocket --

8 THE COURT: You mean it was taken out of your
9 holster and in your pocket?

10 THE WITNESS: Removed from my ankle holster and
11 placed in my right-hand pocket.

12 THE COURT: It was not exposed?

13 THE WITNESS: No, it was not.

14 MR. HERWITZ: I offer C for Identification into
15 evidence.

16 THE COURT: On what basis? Where is the dis-
17 crepancy? I gave you your time. What has that established,
18 as you see it?

19 MR. HERWITZ: Your Honor, it gives --

20 THE COURT: Clarification has taken place. Now
21 we see what that language means.

22 MR. HERWITZ: I offer it for this reason: Your
23 Honor has indicated that you believe, or you concluded
24 tentatively, subject to the rest of it, that there was probable
25 cause. This is a statement of the events leading up to the

2 arrest which the witness says -- but for the discrepancy
3 he points out -- is an accurate statement of what occurred
4 and, therefore, your Honor, I am offering that statement to
5 make my record that there was no probable cause to arrest
6 him, and that's the reason for this entire offer, your Honor.

7 MR. VIZCARRONDO: The government objects. The
8 witness is on the stand. Mr. Herwitz has had an opportunity
9 to examine him. It is inadmissible. It is hearsay.

10 THE COURT: Any other comment by counsel on this
11 present offer?

12 (Pause)

13 The objection is sustained. It will not be re-
14 ceived.

15 MR. HERWITZ: No further questions, your Honor.

16 THE COURT: Is there anything further of this
17 witness by anybody?

18 MR. VIZCARRONDO: No, your Honor.

19 THE COURT: Sergeant, please step down.

20 (Witness excused.)

21 THE COURT: I am ready to call the jury. Does
22 the government wish to state now that the government rests?

23 MR. VIZCARRONDO: The government rests, your Honor.

24 THE COURT: I will take your motions.

25 MR. HERWTIZ: The defendant Best, your Honor, moves

MOTIONS ON CLOSING
(RENEWAL ON MOTION TO SUPPRESS)

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2 to dismiss both counts of the indictment on the ground that
3 as a matter of law, even assuming the admissibility of all
4 the testimony that has gone in over our objection, that the
5 government has failed to make out a prima facie case support-
6 ing either counts of the indictment. I assume your Honor
7 doesn't wish to entertain any extensive arguments on that.

8 THE COURT: If you think you need to say anything
9 other than what we, as professional men, understand what is
10 meant by your motion, go ahead. I want you to feel you have
11 done whatever you think you should. It seems to me it is
12 as simple as you have actually put it, and that is that the
13 judge is not here to weigh the evidence. The question is,
14 in the light of all the evidence adduced is it, as a matter
15 of law, sufficient to go to the jury? Isn't that what you
16 are saying?

17 MR. HERWITZ: I want to protect my record, your
18 Honor.

19 THE COURT: You say it is not. All the grounds
20 you have heretofore urged, including the absence of probable
21 cause for the arrest, and each and every other motion you
22 have made on behalf of your client --

23 MR. HERWITZ: Thank you, your Honor.

24 THE COURT: Mr. Murphy?

25 MR. MURPHY: The defendant Bryant moves to dismiss

pgds

all counts of the indictment, also repeating at this time what is set forth in all the arguments we have made as to certain pieces of evidence received over our objection, your Honor; also on the ground that they have not made out a prima facie case as to the conspiracy count and as to the attempt count. As to the substantive count I would like to elaborate on that briefly.

It is the defendant Bryant's position that evidence sufficient to show an attempt by these persons to rob a bank have not been evinced or put forward by the government insofar as it refers to the defendant Bryant.

You have circumstantial evidence. You have evidence that persons walked into a bank, and you have evidence that they walked out of the bank. That's the government's case.

B43 Circumstantially from that people might say that they did intend to rob the bank at that time.

The defendant Bryant argues that that's no more than preparation, preparatory to a crime, than to attempt to commit a crime, and that any intent that the jury would find from that is just on that circumstantial evidence. At best the evidence is ambiguous. So we have circumstantial evidence which can have one conclusion which is consistent with innocence and one that is consistent with guilt.

2 Under the circumstances, your Honor, they have
3 not put forward sufficient evidence to the jury on which
4 the jury can convict as to the attempt count. At the attempt
5 count the defendant Bryant, we again urge that the Court
6 dismiss that.

7 MR. VIZCARRONDO: May I be heard on that briefly?

8 THE COURT: I would like to take all the motions.

9 MR. CONCANNON: Your Honor, Mr. Simpson asks your
10 Honor for a judgment of acquittal under Rule 29 of the Federal
11 Rules of Federal Procedure for what I think are very solid
12 reasons.

13 First of all, there has not been shown sufficient
14 non-hearsay testimony connecting him with a conspiracy to
15 support that count any further against him. The conspiracy
16 count should be thrown out.

17 Secondly, there has not been sufficient evidence
18 against Mr. Simpson in connection with both of the counts
19 so that a reasonable man could determine that he is guilty
20 beyond a reasonable doubt. That cannot be.

21 In addition, I think it is quite clear there was
22 no probable cause to arrest Mr. Simpson in the first place.

23 For those reasons I ask your Honor, and Mr. Simp-
24 son requests that your Honor, grant a judgment of acquittal.

25 THE COURT: Now I will hear from the government.

2 MR. VIZCARRONDO: Your Honor, I would just want
3 to respond to Mr. Murphy's motion, and with all due respect
4 to him I urge he read the indictment. The second count
5 does not charge with attempted bank robbery; it charges the
6 defendant with entering a bank, committing a felony in the
7 bank.

8 Without belaboring the point very much -- your
9 Honor has sat on this trial and he has heard all the evidence,
10 and unless your Honor has any specific questions the govern-
11 ment submits that its evidence is more than sufficient to
12 set forth a case against all the defendants.

13 THE COURT: The Court has a simple duty at this
14 juncture and that is to inquire whether or not the evidence
15 placed upon the record up to this moment is sufficient as a
16 matter of law to go to the jury. What the jury will do with
17 it is an entirely different proposition.

18 There are cases where the evidence is thin and
19 where there is no evidence of one element of a crime or barely
20 enough of one element. So, as a matter of law, you have
21 to say in such a situation that there is not enough evidence,
22 legal evidence, to warrant going forward with the case. But
23 here there is.

24 I don't have to weigh that evidence. I have to
25 ask myself: Is there evidence on every legal point which the

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MAR 16 1976
ROBERT B. FISKE JR.
U.S. ATTORNEY
SO. DIST. OF N. Y.

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